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CHAPTER 823

An act to amend Sections 8277.5 and 8277.6 of the Education Code, relating to child care and development, 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. Section 8277.5 of the Education Code is amended to read:

8277.5. (a) For purposes of this section "department" means the Department of Housing and Community Development.

(b) Subject to appropriation in the annual Budget Act, the Child Care and Development Facilities Loan Guaranty Fund and the Child Care and Development Facilities Direct Loan Fund are hereby established in the State Treasury. The Superintendent of Public Instruction may transfer state funds appropriated for child care facilities enhancement and the proceeds derived from any future sales of tax-exempt child care and development facilities bonds into these funds.

(c) Notwithstanding Section 13340 of the Government Code, all moneys in the Child Care and Development Facilities Loan Guaranty Fund and the Child Care and Development Facilities Direct Loan Fund, including any interest on loans made from the fund, or loan repayments to the fund, are hereby continuously appropriated to the department for carrying out the purposes of this section and Section 8277.6, respectively. Any loan repayment or interest resulting from investment or deposit of moneys in these funds shall be deposited in the applicable fund, notwithstanding Section 16305.7 of the Government Code. Moneys in the funds shall not be subject to transfer to any other fund pursuant to Part 2 (commencing with Section 16300) of Division 4 of Title 2 of the Government Code, except the Surplus Money Investment Fund.

(d) (1) Moneys deposited in the Child Care and Development Facilities Loan Guaranty Fund shall be used for the purpose of guaranteeing private sector loans to sole proprietorships, partnerships, proprietary and nonprofit corporations, and local public agencies for the purchase, development, construction, expansion, or improvement of licensed child care and development facilities, and for the purpose of administering the guarantees of these loans. The loan guarantees shall be made by the department or by a public or private entity approved by the department, in accordance with the priorities established by the department, as described in Section 8277.6. The full faith and credit of the State of

California is not pledged to the Child Care and Development Facilities Loan Guaranty Fund and the state is not liable for loan defaults that exceed the amount of funds deposited with the Child Care and Development Facilities Loan Guaranty Fund.

(2) A loan guarantee made pursuant to this section may not exceed 80 percent of the principal and interest amount of a private sector loan guaranteed by the fund and shall be used only to guarantee a private sector loan for the purchase, development, construction, expansion, or improvement of facilities described in Section 8277.6 and for related equipment and fixtures, but shall not be used primarily to refinance an existing loan or for working capital, supplies, or inventory. A loan guarantee for improvements shall be limited to those improvements necessary for any of the following purposes:

(A) To obtain, maintain, renew, expand, or revise a child care license.

(B) To make necessary health and safety improvements.

(C) To make seismic improvements.

(D) To provide access for disabled children.

(3) The aggregate amount of outstanding loan guarantees shall not exceed four times the amount in the Child Care and Development Facilities Loan Guaranty Fund.

(4) A loan guarantee made pursuant to this section shall be for the term of the loan or 20 years, whichever is less. Security for the guaranteed loan may include a deed of trust, personal guarantees of shareholders and partners in the case of proprietary borrowers, or other reasonably available collateral. These liens may be subordinated to other liens. Default provisions and other terms shall be reasonable and designed to obtain prompt and full repayment of the guaranteed loan by the borrower. Reasonable loan guarantee fees and points may be charged to applicants and borrowers by any public or private entity approved by the department, as described in regulations adopted by the department.

(5) A loan guarantee made pursuant to this section shall only be granted if the applicant agrees to provide child care in a facility for a period of 20 years or the term of the guaranteed loan, whichever is less.

(6) A loan guarantee made pursuant to this section terminates 120 days after the lender's receipt of notice that the recipient has either ceased making payments or providing child care in the facility for which the loan was made, or both, unless the lender takes action to accelerate the loan. If a family day care provider ceases to operate, but retains its three-year license, the provider shall give notice to the department and the lending institution of its intention to resume offering child care services for the term of its license, or shall provide notice of its intention to cease providing child care services. The Child Care and Development Facilities Loan Guaranty Fund is not liable for a default occurring after the loan guarantee has ended.

(e) (1) Moneys deposited in the Child Care and Development Facilities Direct Loan Fund shall be used for the purpose of making subordinated loans directly or through a public or private entity approved by the department to sole proprietorships, partnerships, proprietary and nonprofit corporations, and local public agencies for the purchase, development, construction, expansion, or improvement of licensed child care and development facilities, and for the purpose of administering these loans. Loans shall be made in accordance with the priorities established by the department as set forth in Section 8277.6. The full faith and credit of the State of California is not pledged to the Child Care and Development Facilities Direct Loan Fund and the state is not liable for loan defaults that exceed the amount of funds deposited in the Child Care and Development Facilities Direct Loan Fund.

(2) A loan made pursuant to this section may not exceed 50 percent of the total amount of investment for the purchase, development, expansion, or improvement of eligible child care and development facilities as described in Section 8277.6 and for related equipment and fixtures, but may not be used primarily to refinance an existing loan, for working capital, for supplies, or for inventory. A loan made pursuant to this section may not exceed 20 percent of the total amount of investment if the same facility is also utilizing a loan guarantee pursuant to subdivision (c). Investment for purposes of this paragraph means the total cost paid or incurred by the applicant in constructing, renovating, or acquiring a facility. A loan for improvements shall be limited to those improvements necessary for any of the following purposes:

(A) To obtain, maintain, renew, expand, or revise a child care license.

(B) To make necessary health and safety improvements.

(C) To make seismic improvements.

(D) To provide access for disabled children.

(3) The term of a loan made pursuant to this section may not exceed 20 years. Security for the loan may include a deed of trust, personal guarantees of shareholders and partners in the case of proprietary borrowers, or other reasonably available collateral. These liens may be subordinated to other liens. The interest rate, payment provisions, late charges, and other terms may vary based on the ability of the borrower to repay the loan, but shall be reasonable and designed to obtain prompt and full repayment of the loan by the borrower. Reasonable loan fees and points may be charged to applicants and borrowers by a public or private entity approved by the department, as described in regulations adopted by the department.

(f) Funds appropriated for the purposes of this section and Section 8277.6 shall be made from funds that are not designated as meeting the state's minimum funding obligation under Section 8 of Article XVI of the California Constitution.

SEC. 2. Section 8277.6 of the Education Code is amended to read:

8277.6. (a) For purposes of this section "department" means the Department of Housing and Community Development.

(b) The department shall administer the Child Care and Development Facilities Loan Guaranty Fund and the Child Care and Development Facilities Direct Loan Fund. The department may administer the funds directly, through interagency agreements with other state agencies, through contracts with public or private entities, or through any combination thereof. If the department determines that a public or private entity is capable of making child care and development facilities loans or loan guarantees, the department may delegate the authority to review and approve those loans or guarantees to the public or private entity. The department is authorized to enter into an interagency agreement with the Trade and Commerce Agency to carry out the purposes of this section and Section 8277.5 by utilizing the services of small business financial development corporations established pursuant to Chapter 1 (commencing with Section 14000) of Part 5 of Division 3 of the Corporations Code. Toward this end, the department is authorized to transfer funds from the Child Care and Development Facilities Direct Loan Fund to the California Economic Development Grant and Loan Fund established by Section 15327 of the Government Code and to transfer funds from the Child Care and Development Facilities Loan Guaranty Fund to the Small Business Expansion Fund established by Section 14030 of the Corporations Code. Those funds shall be deposited into a Child Care Direct Loan Fund Account and a Child Care Loan Guaranty Fund Account hereby established in the respective funds. Notwithstanding anything to the contrary in Chapter 1 (commencing with Section 15310) of Part 6.7 of Division 3 of Title 2 of the Government Code and Chapter 1 (commencing with Section 14000) of Part 5 of Division 3 of the Corporations Code, the funds in these accounts shall be administered in compliance with the requirements of this section and Section 8277.5.

(c) Eligible applicants for the loan guaranty program and the direct loan program shall include sole proprietorships, partnerships, proprietary and nonprofit corporations, and local public agencies that provide licensed child care and development services. Facilities that primarily serve households with incomes not exceeding 75 percent of the local median income, as determined from time to time by the United States Department of Housing and Urban Development, shall be given priority in loan guarantees and direct loans made pursuant to this section and Section 8277.5. Eligible facilities shall include full-day and part-day child care and development facilities and family child care homes serving more than six children.

(d) Loan guarantees and direct loans for family child care homes serving more than six children are limited to loans for repairs and renovation that are required to maintain a license or, if the family

child care provider is otherwise qualified for a license for more than six children, to repairs, renovations, and additions required to obtain a license for more than six children. A family child care home provider shall provide evidence from the community care licensing division that the repairs, renovations, or additions are required to maintain the license or obtain a license for more than six children. Loan guarantees and direct loans for family child care homes shall not be made for the purpose of purchasing a home or any real property.

(e) The State Department of Education shall provide program priorities that shall govern the ranking of applications by the department. These priorities shall include, but are not limited to, the following:

(1) Geographic priorities based on the extent of need for child care and development supply-building efforts in different parts of the state.

(A) Not less than 30 percent of the loan guarantee and direct loan obligations shall benefit providers located in rural areas, as defined in subparagraph (B). If the amount of qualified applications from rural providers is insufficient to satisfy this requirement, the excess capacity reserved for rural providers may be made available to other qualified applications according to the policies and procedures of the department. The remaining 70 percent of funds shall be available to rural or urban areas and other priorities in accordance with this subdivision.

(B) For purposes of subdivision (a), rural communities are defined by any county with fewer than 400 residents per square mile.

(2) Age priorities based on the extent of need for child care and development supply-building efforts for children of different age groups.

(3) Income priorities based on the extent of need for child care and development supply-building efforts to benefit families transitioning to work or other lower income families.

(4) Program priorities based on the extent of facilities needs among specific kinds of providers, including those that contract to administer state and federally funded child care and development programs administered by the State Department of Education, providers who have lost classrooms due to class size reduction or other state or local initiatives, or providers that need to expand to meet the needs of a child care initiative for recipients of aid under Chapter 3 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code, or any successor program.

(f) The program priorities shall reflect input from representatives of diverse sectors of the child care and development field, financial institutions, local planning councils, the Child Development Programs Advisory Committee, and the State Department of Social Services for purposes of identifying communities with high percentages of recipients of aid under Chapter 3 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions

Code, or any successor program, who need child care to meet work requirements. The department shall assess and report annually, commencing within 12 months of implementation of this section to the Legislature, after consultation with the State Department of Education, on the performance, effectiveness, and fiscal standing of the Child Care and Development Facilities Loan Guaranty Fund and the Child Care and Development Facilities Direct Loan Fund. The report shall include information on the number of defaults, the types of facilities in default, and a review of the adequacy of the set-aside for rural areas specified in paragraph (1) of subdivision (e).

(g) The department shall adopt regulations and establish priorities, forms, policies and procedures for implementing and managing the Child Care and Development Facilities Loan Guaranty Fund and the Child Care and Development Facilities Direct Loan Fund and making the loan guarantees and direct loans authorized hereunder consistent with priorities provided by the State Department of Education. To the extent feasible, the department shall use applicant fees and points to cover its administrative costs. The department may utilize an amount of money from the Child Care and Development Facilities Loan Guaranty Fund and the Child Care and Development Facilities Direct Loan Fund, as appropriate, for reasonable administrative costs in any given fiscal year. Unless an appropriation for administrative costs is made in the annual Budget Act that exceeds the following limits, administrative expenditures shall not exceed 3 percent of the amount appropriated to each fund in the Budget Act of 1997.

(h) The department shall adopt regulations for serving family day care homes efficiently, including, but not limited to, making loans available from the Child Care and Development Facilities Direct Loan Fund to local microenterprise loan funds and other lenders who may relend the funds in appropriate amounts to eligible family day care home providers or by authorizing a specified amount of guarantees of small loans by local microenterprise loan funds and other lenders serving eligible family day care home providers.

(i) The department may adopt regulations for the purposes of this section as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. For the purposes of the Administrative Procedure Act, including Section 11349.6 of the Government Code, the adoption of the regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare, notwithstanding subdivision (e) of Section 11346.1 of the Government Code. Notwithstanding subdivision (e) of Section 11346.1, any regulation adopted pursuant to this section shall not remain in effect more than 180 days unless the department complies with all provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of

the Government Code, as required by subdivision (e) of Section 11346.1 of the Government Code.

SEC. 2.5. The Legislature recognizes all of the following:

(a) That there is a shortage of adequate child care and development facilities.

(b) That there is an immediate and growing need for these child care and development facilities to support the increasing number of parents and caretakers who must leave their children to seek or perform jobs because of welfare reform and other reasons, and to provide care and developmental assistance for their children.

(c) That the Child Care and Development Facilities Loan Guarantee Fund and the Child Care and Development Facilities Direct Loan Fund, added by Chapter 270 of the Statutes of 1997, can help meet this need. However, the programs supported by these funds may take a year or more to implement. The amendments proposed by Sections 1 and 2 of this act will reduce this implementation time substantially.

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 promptly increase the supply of adequate child care and development facilities, it is necessary that this act go into effect immediately.

CHAPTER 824

An act to add and repeal Section 12923.5 of the Insurance Code, relating to long-term care insurance.

[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 12923.5 is added to the Insurance Code, to read:

12923.5. The commissioner shall have the authority to contract for the services of actuarial professionals as the commissioner deems necessary. These contracts shall not be subject to otherwise applicable provisions of the Government Code or the Public Contract Code that regulate contracting for services.

This section shall become inoperative on July 1, 1999, and, as of January 1, 2000, is repealed, unless a later enacted statute, that

becomes operative on or before January 1, 2000, deletes or extends the dates on which it becomes inoperative and is repealed.

CHAPTER 825

An act to amend Section 1708.7 of the Civil Code, and to amend Sections 422, 646.9, and 653m of the Penal Code, relating to stalking.

[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. It is the intent of this act to clarify that electronic communications are included in the actions that can constitute the crimes of harassment and stalking. It is not the intent of the Legislature, by adoption of this act, to restrict in any way the types of conduct or actions that can constitute harassment or stalking.

SEC. 2. Section 1708.7 of the Civil Code is amended to read:

1708.7. (a) A person is liable for the tort of stalking when the plaintiff proves all of the following elements of the tort:

(1) The defendant engaged in a pattern of conduct the intent of which was to follow, alarm, or harass the plaintiff. In order to establish this element, the plaintiff shall be required to support his or her allegations with independent corroborating evidence.

(2) As a result of that pattern of conduct, the plaintiff reasonably feared for his or her safety, or the safety of an immediate family member. For purposes of this paragraph, "immediate family" means a spouse, parent, child, any person related by consanguinity or affinity within the second degree, or any person who regularly resides, or, within the six months preceding any portion of the pattern of conduct, regularly resided, in the plaintiff's household.

(3) One of the following:

(A) The defendant, as a part of the pattern of conduct specified in paragraph (1), made a credible threat with the intent to place the plaintiff in reasonable fear for his or her safety, or the safety of an immediate family member and, on at least one occasion, the plaintiff clearly and definitively demanded that the defendant cease and abate his or her pattern of conduct and the defendant persisted in his or her pattern of conduct.

(B) The defendant violated a restraining order, including, but not limited to, any order issued pursuant to Section 527.6 of the Code of Civil Procedure, prohibiting any act described in subdivision (a).

(b) For the purposes of this section:

(1) "Pattern of conduct" means conduct composed of a series of acts over a period of time, however short, evidencing a continuity of

purpose. Constitutionally protected activity is not included within the meaning of "pattern of conduct."

(2) "Credible threat" means a verbal or written threat, including that communicated by means of an electronic communication device, or a threat implied by a pattern of conduct or a combination of verbal, written, or electronically communicated statements and conduct, made with the intent and 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.

(3) "Electronic communication device" includes, but is not limited to, telephones, cellular telephones, computers, video recorders, fax machines, or pagers. "Electronic communication" has the same meaning as the term defined in Subsection 12 of Section 2510 of Title 18 of the United States Code.

(4) "Harass" means a knowing and willful course of conduct directed at a specific person which seriously alarms, annoys, torments, or terrorizes the person, and which 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 person.

(c) A person who commits the tort of stalking upon another is liable to that person for damages, including, but not limited to, general damages, special damages, and punitive damages pursuant to Section 3294.

(d) In an action pursuant to this section, the court may grant equitable relief, including, but not limited to, an injunction.

(e) The rights and remedies provided in this section are cumulative and in addition to any other rights and remedies provided by law.

(f) This section shall not be construed to impair any constitutionally protected activity, including, but not limited to, speech, protest, and assembly.

SEC. 3. Section 422 of the Penal Code is amended to read:

422. Any person who willfully threatens to commit a crime which will result in death or great bodily injury to another person, with the specific intent that the statement, made verbally, in writing, or by means of an electronic communication device, is to be taken as a threat, even if there is no intent of actually carrying it out, which, on its face and under the circumstances in which it is made, is so unequivocal, unconditional, immediate, and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat, and thereby causes that person reasonably to be in sustained fear for his or her own safety or for his or her immediate family's safety, shall be punished by imprisonment in the county jail not to exceed one year, or by imprisonment in the state prison.

For the purposes of this section, "immediate family" means any spouse, whether by marriage or not, parent, child, any person related by consanguinity or affinity within the second degree, or any other person who regularly resides in the household, or who, within the prior six months, regularly resided in the household.

"Electronic communication device" includes, but is not limited to, telephones, cellular telephones, computers, video recorders, fax machines, or pagers. "Electronic communication" has the same meaning as the term defined in Subsection 12 of Section 2510 of Title 18 of the United States Code.

SEC. 4. Section 646.9 of the Penal Code is amended to read:

646.9. (a) Any person who willfully, maliciously, and repeatedly follows or harasses another person and who makes a credible threat with the intent to place that person in reasonable fear for his or her safety, or the safety of his or her immediate family, is guilty of the crime of stalking, punishable 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 that fine and imprisonment, or by imprisonment in the state prison.

(b) Any person who violates subdivision (a) when there is a temporary restraining order, injunction, or any other court order in effect prohibiting the behavior described in subdivision (a) against the same party, shall be punished by imprisonment in the state prison for two, three, or four years.

(c) Every person who, having been convicted of a felony under this section, commits a second or subsequent violation of this section shall be punished by imprisonment in the state prison for two, three, or four years.

(d) In addition to the penalties provided in this section, the sentencing court may order a person convicted of a felony under this section to register as a sex offender pursuant to subparagraph (E) of paragraph (2) of subdivision (a) of Section 290.

(e) For the purposes of this section, "harasses" means a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, torments, or terrorizes the person, and that serves no legitimate purpose. This 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 person.

(f) For purposes of this section, "course of conduct" means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose. Constitutionally protected activity is not included within the meaning of "course of conduct."

(g) For the purposes of this section, "credible threat" means a verbal or written threat, including that performed through the use of an electronic communication device, or a threat implied by a pattern of conduct or a combination of verbal, written, or

electronically communicated statements and conduct made with the intent to place the person that is the target of the threat in reasonable fear for his or her safety or the safety of his or her family and made with 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 family. It is not necessary to prove that the defendant had the intent to actually carry out the threat. The present incarceration of a person making the threat shall not be a bar to prosecution under this section.

(h) For purposes of this section, the term "electronic communication device" includes, but is not limited to, telephones, cellular phones, computers, video recorders, fax machines, or pagers. "Electronic communication" has the same meaning as the term defined in Subsection 12 of Section 2510 of Title 18 of the United States Code.

(i) This section shall not apply to conduct that occurs during labor picketing.

(j) If probation is granted, or the execution or imposition of a sentence is suspended, for any person convicted under this section, it shall be a condition of probation that the person participate in counseling, as designated by the court. However, the court, upon a showing of good cause, may find that the counseling requirement shall not be imposed.

(k) The sentencing court also shall consider issuing an order restraining the defendant from any contact with the victim, that may be valid for up to 10 years, as determined by the court. It is the intent of the Legislature that the length of any restraining order be based upon the seriousness of the facts before the court, the probability of future violations, and the safety of the victim and his or her immediate family.

(*l*) For purposes of this section, "immediate family" means any spouse, parent, child, any person related by consanguinity or affinity within the second degree, or any other person who regularly resides in the household, or who, within the prior six months, regularly resided in the household.

(m) The court shall consider whether the defendant would benefit from treatment pursuant to Section 2684. If it is determined to be appropriate, the court shall recommend that the Department of Corrections make a certification as provided in Section 2684. Upon the certification, the defendant shall be evaluated and transferred to the appropriate hospital for treatment pursuant to Section 2684.

SEC. 5. Section 653m of the Penal Code is amended to read:

653m. (a) Every person who, with intent to annoy, telephones or makes contact by means of an electronic communication device with another and addresses to or about the other person any obscene language or addresses to the other person any threat to inflict injury to the person or property of the person addressed or any member of his or her family, is guilty of a misdemeanor. Nothing in this

subdivision shall apply to telephone calls or electronic contacts made in good faith.

(b) Every person who makes repeated telephone calls or makes repeated contact by means of an electronic communication device with intent to annoy another person at his or her residence, is, whether or not conversation ensues from making the telephone call or electronic contact, guilty of a misdemeanor. Nothing in this subdivision shall apply to telephone calls or electronic contacts made in good faith.

(c) Every person who makes repeated telephone calls or makes repeated contact by means of an electronic communication device with the intent to annoy another person at his or her place of work is guilty of a misdemeanor punishable by a fine of not more than one thousand dollars ($1,000), or by imprisonment in a county jail for not more than one year, or by both the fine and imprisonment. Nothing in this subdivision shall apply to telephone calls or electronic contacts made in good faith. This subdivision applies only if one or both of the following circumstances exist:

(1) There is a temporary restraining order, an injunction, or any other court order, or any combination of these court orders, in effect prohibiting the behavior described in this section.

(2) The person makes repeated telephone calls or makes repeated contact by means of an electronic communication device with the intent to annoy another person at his or her place of work, totaling more than 10 times in a 24-hour period, whether or not conversation ensues from making the telephone call or electronic contact, and the repeated telephone calls or electronic contacts are made to the workplace of an adult or fully emancipated minor who is a spouse, former spouse, cohabitant, former cohabitant, or person with whom the person has a child or has had a dating or engagement relationship or is having a dating or engagement relationship.

(d) Any offense committed by use of a telephone may be deemed to have been committed where the telephone call or calls were made or received. Any offense committed by use of an electronic communication device or medium, including the Internet, may be deemed to have been committed where the electronic communication or communications were originally sent or first viewed by the recipient.

(e) Subdivision (a), (b), or (c) is violated when the person acting with intent to annoy makes a telephone call requesting a return call and performs the acts prohibited under subdivision (a), (b), or (c) upon receiving the return call.

(f) If probation is granted, or the execution or imposition of sentence is suspended, for any person convicted under this section, the court may order as a condition of probation that the person participate in counseling.

(g) For purposes of this section the term "electronic communication device" includes, but is not limited to, telephones,

cellular phones, computers, video recorders, fax machines, or pagers. "Electronic communication" has the same meaning as the term defined in Subsection 12 of Section 2510 of Title 18 of the United States Code.

SEC. 6. This act shall become operative only if Assembly Bill 2351 is also enacted and becomes operative on or before January 1, 1999.

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 826

An act to amend Sections 646.9 and 653m of, and to add Sections 13515.55 and 13980 to, the Penal Code, relating to computer crimes, and making an appropriation therefor.

[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 646.9 of the Penal Code is amended to read:

646.9. (a) Any person who willfully, maliciously, and repeatedly follows or harasses another person and who makes a credible threat with the intent to place that person in reasonable fear for his or her safety, or the safety of his or her immediate family, is guilty of the crime of stalking, punishable 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 that fine and imprisonment, or by imprisonment in the state prison.

(b) Any person who violates subdivision (a) when there is a temporary restraining order, injunction, or any other court order in effect prohibiting the behavior described in subdivision (a) against the same party, shall be punished by imprisonment in the state prison for two, three, or four years.

(c) Every person who, having been convicted of a felony under this section, commits a second or subsequent violation of this section

shall be punished by imprisonment in the state prison for two, three, or four years.

(d) In addition to the penalties provided in this section, the sentencing court may order a person convicted of a felony under this section to register as a sex offender pursuant to subparagraph (E) of paragraph (2) of subdivision (a) of Section 290.

(e) For the purposes of this section, "harasses" means a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, torments, or terrorizes the person, and that serves no legitimate purpose. This 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 person.

(f) For purposes of this section, "course of conduct" means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose. Constitutionally protected activity is not included within the meaning of "course of conduct."

(g) For the purposes of this section, "credible threat" means a verbal or written threat, including that performed through the use of an electronic communication device, or a threat implied by a pattern of conduct or a combination of verbal, written, or electronically communicated statements and conduct made with the intent to place the person that is the target of the threat in reasonable fear for his or her safety or the safety of his or her family and made with 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 family. It is not necessary to prove that the defendant had the intent to actually carry out the threat. The present incarceration of a person making the threat shall not be a bar to prosecution under this section.

(h) For purposes of this section, the term "electronic communication device" includes, but is not limited to, telephones, cellular phones, computers, video recorders, fax machines, or pagers. "Electronic communication" has the same meaning as the term defined in Subsection 12 of Section 2510 of Title 18 of the United States Code.

(i) This section shall not apply to conduct that occurs during labor picketing.

(j) If probation is granted, or the execution or imposition of a sentence is suspended, for any person convicted under this section, it shall be a condition of probation that the person participate in counseling, as designated by the court. However, the court, upon a showing of good cause, may find that the counseling requirement shall not be imposed.

(k) The sentencing court also shall consider issuing an order restraining the defendant from any contact with the victim, that may be valid for up to 10 years, as determined by the court. It is the intent

of the Legislature that the length of any restraining order be based upon the seriousness of the facts before the court, the probability of future violations, and the safety of the victim and his or her immediate family.

(*l*) For purposes of this section, "immediate family" means any spouse, parent, child, any person related by consanguinity or affinity within the second degree, or any other person who regularly resides in the household, or who, within the prior six months, regularly resided in the household.

(m) The court shall consider whether the defendant would benefit from treatment pursuant to Section 2684. If it is determined to be appropriate, the court shall recommend that the Department of Corrections make a certification as provided in Section 2684. Upon the certification, the defendant shall be evaluated and transferred to the appropriate hospital for treatment pursuant to Section 2684.

SEC. 2. Section 653m of the Penal Code is amended to read:

653m. (a) Every person who, with intent to annoy, telephones or makes contact by means of an electronic communication device with another and addresses to or about the other person any obscene language or addresses to the other person any threat to inflict injury to the person or property of the person addressed or any member of his or her family, is guilty of a misdemeanor. Nothing in this subdivision shall apply to telephone calls or electronic contacts made in good faith.

(b) Every person who makes repeated telephone calls or makes repeated contact by means of an electronic communication device with intent to annoy another person at his or her residence, is, whether or not conversation ensues from making the telephone call or electronic contact, guilty of a misdemeanor. Nothing in this subdivision shall apply to telephone calls or electronic contacts made in good faith.

(c) Every person who makes repeated telephone calls or makes repeated contact by means of an electronic communication device with the intent to annoy another person at his or her place of work is guilty of a misdemeanor punishable by a fine of not more than one thousand dollars ($1,000), or by imprisonment in a county jail for not more than one year, or by both the fine and imprisonment. Nothing in this subdivision shall apply to telephone calls or electronic contacts made in good faith. This subdivision applies only if one or both of the following circumstances exist:

(1) There is a temporary restraining order, an injunction, or any other court order, or any combination of these court orders, in effect prohibiting the behavior described in this section.

(2) The person makes repeated telephone calls or makes repeated contact by means of an electronic communication device with the intent to annoy another person at his or her place of work, totaling more than 10 times in a 24-hour period, whether or not conversation ensues from making the telephone call or electronic contact, and the

repeated telephone calls or electronic contacts are made to the workplace of an adult or fully emancipated minor who is a spouse, former spouse, cohabitant, former cohabitant, or person with whom the person has a child or has had a dating or engagement relationship or is having a dating or engagement relationship.

(d) Any offense committed by use of a telephone may be deemed to have been committed where the telephone call or calls were made or received. Any offense committed by use of an electronic communication device or medium, including the Internet, may be deemed to have been committed where the electronic communication or communications were originally sent or first viewed by the recipient.

(e) Subdivision (a), (b), or (c) is violated when the person acting with intent to annoy makes a telephone call requesting a return call and performs the acts prohibited under subdivision (a), (b), or (c) upon receiving the return call.

(f) If probation is granted, or the execution or imposition of sentence is suspended, for any person convicted under this section, the court may order as a condition of probation that the person participate in counseling.

(g) For purposes of this section the term "electronic communication device" includes, but is not limited to, telephones, cellular phones, computers, video recorders, fax machines, or pagers. "Electronic communication" has the same meaning as the term defined in Subsection 12 of Section 2510 of Title 18 of the United States Code.

SEC. 3. Section 13515.55 is added to the Penal Code, to read:

13515.55. Every city police officer or deputy sheriff at a supervisory level who is assigned field or investigative duties shall complete a high technology crimes and computer seizure training course certified by the Commission on Peace Officer Standards and Training by January 1, 2000, or within 18 months of assignment to supervisory duties. Completion of the course may be satisfied by telecourse, video training tape, or other instruction. This training shall be offered to all city police officers and deputy sheriffs as part of continuing professional training. The training shall, at a minimum, address relevant laws, recognition of high technology crimes and computer evidence collection and preservation.

SEC. 4. Section 13980 is added to the Penal Code, to read:

13980. (a) The Office of Criminal Justice Planning shall undertake a study to determine whether it would be feasible to develop a state-operated center on computer forensics for the purpose of collecting, compiling, and analyzing information, including evidence seized in connection with criminal proceedings, in computer formats to provide assistance to state and local law enforcement agencies in the investigation and prosecution of crimes involving computer technology.

(b) The office shall involve state and local law enforcement agencies as well as representatives of the computer industry in the development of the feasibility study required by this section.

(c) The office shall report its findings and conclusions to the Legislature on or before June 30, 2000.

SEC. 5. This act shall become operative only if Senate Bill 1796 is also enacted and becomes operative on or before January 1, 1999.

SEC. 6. The sum of two hundred thirty thousand dollars ($230,000) is hereby appropriated from the General Fund to the Office of Criminal Justice Planning for purposes of the performance of the study required under Section 4 of this act.

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 827

An act to amend Sections 4828.3, 18000, 18003, 18023.1, 18061, 18100.5, 18190, 18266.1, 18293, 18315, 18563, and 18594 of, to add Section 18016.5 to, to add Article 4 (commencing with Section 18245) to Chapter 3 of Division 7 of, to repeal Sections 18059 and 18341 of, and to repeal and add Section 18003.5 of, the Financial Code, relating to industrial loan companies.

[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 4828.3 of the Financial Code is amended to read:

4828.3. A California state bank or an industrial loan company may, with the approval of the commissioner and its board and, if the transaction constitutes a reorganization as defined in Section 181 of the Corporations Code, subject to the provisions of Chapter 12 (commencing with Section 1200) of Division 1 of Title 1 of the Corporations Code, acquire in a single transaction all (except directors' qualifying shares, if any) of the outstanding shares of another depository corporation in accordance with a plan that provides either of the following:

(a) That the other depository corporation shall (1) immediately sell its whole business unit (as defined in Section 4840) to the California state bank or industrial loan company and (2) shall thereafter wind up and dissolve or, if the other depository corporation is a California state bank or an industrial loan company and if the commissioner so approves, change into a nonbank corporation by amending its articles and changing its name.

(b) That the other depository corporation shall immediately merge into the California state bank or industrial loan company.

SEC. 2. Section 18000 of the Financial Code is amended to read:

18000. This division shall be known and may be cited as the "Industrial Loan Law," the "Industrial Banking Law," or the "Thrift and Loan Law."

SEC. 2.5. Section 18003 of the Financial Code is amended to read:

18003. "Industrial loan company," "industrial bank," "thrift and loan company," or "company" means any corporation which in the regular course of business loans money and issues its own choses in action under the provisions of this division.

SEC. 3. Section 18003.5 of the Financial Code is repealed.

SEC. 4. Section 18003.5 is added to the Financial Code, to read:

18003.5. (a) When used with respect to an industrial loan company, "insured" means an industrial loan company that is insured by the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act (12 U.S.C. Sec. 1811 et seq.).

(b) When used with respect to an investment certificate, "insured" means an investment certificate that is insured by the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act (12 U.S.C. Sec. 1811 et seq.).

SEC. 5. Section 18016.5 is added to the Financial Code, to read:

18016.5. "Premium finance agency" has the meaning set forth in Section 18560.

SEC. 6. Section 18023.1 of the Financial Code is amended to read:

18023.1. In addition to the borrowings under Section 18023, an industrial loan company may borrow funds from the Federal Home Loan Bank, the Federal Deposit Insurance Corporation, or a Federal

Reserve Bank, which borrowed funds shall not be included in the borrowing limitations contained in Section 18023.

SEC. 7. Section 18059 of the Financial Code is repealed.

SEC. 8. Section 18061 of the Financial Code is amended to read:

18061. If an industrial loan company refers in any advertisement to rates of charge, discount, charges or costs of loans, those charges shall be stated fully and clearly in a manner as may be necessary to prevent misunderstanding thereof by prospective borrowers and to give adequate information to prospective borrowers. If the rates or costs advertised do not apply to loans of all classes, this fact shall be clearly indicated in the advertisement.

SEC. 9. Section 18100.5 of the Financial Code is amended to read:

18100.5. Each industrial loan company, other than a premium finance agency, that has issued and has outstanding thrift obligations shall, as a condition to its authority to conduct business under this division, participate as a member of the Federal Deposit Insurance Corporation.

SEC. 10. Section 18190 of the Financial Code is amended to read:

18190. An industrial loan company may:

(a) Loan money, secured or unsecured, with or without the pledge of its installment investment certificates.

(b) Collect and receive charges for loans in advance or otherwise.

(c) Purchase, sell, or discount the following obligations: bona fide trust receipts, secured or unsecured choses in action, conditional sales contracts, or security agreements.

(d) Purchase, sell, discount, or originate lease obligations.

SEC. 11. Article 4 (commencing with Section 18245) is added to Chapter 3 of Division 7 of the Financial Code, to read:

Article 4. Credit Cards

18245. (a) Subject to any regulations that the commissioner may issue, an industrial loan company may issue credit cards and may acquire or hold obligations resulting from the use of credit cards.

(b) Except as the commissioner may otherwise provide by regulation or order, the acquiring and holding of obligations pursuant to subdivision (a) are not subject to Article 2 (commencing with Section 18205) or Article 6.5 (commencing with Section 18300).

SEC. 12. Section 18266.1 of the Financial Code is amended to read:

18266.1. An industrial loan company may make loans and acquire obligations, the proceeds of which are used for home improvements that are secured by real property having a market value of at least 100 percent of the principal amount owing on the loan being made by the industrial loan company or obligation being acquired by the industrial loan company and on prior encumbrances, except nondelinquent tax liens, secured by the same real property. Home improvements means additions, alterations, or modifications to

owner-occupied property consisting of one to four dwelling units and appurtenant buildings thereto or to the real property containing same.

SEC. 13. Section 18293 of the Financial Code is amended to read:

18293. If credit disability or loss-of-income insurance is provided pursuant to this division, the industrial loan company shall also deliver an understandable written statement to the borrower detailing the conditions when the borrower will be entitled to make a claim under the insurance policy and the procedure to be followed in making the claim.

SEC. 14. Section 18315 of the Financial Code is amended to read:

18315. (a) When authorized to conduct business pursuant to this division, an industrial loan company may sell and issue its investment certificates subject to the provisions of this division. The commissioner may, by written order directed to a company or by rule or regulation, impose terms and conditions upon investment certificates and the sale or redemption thereof or the payment of interest thereon, as he or she deems reasonable and necessary or advisable for the protection of the company or the public, and he or she may from time to time in his or her discretion amend, alter or revoke any such order or regulation or any condition or provision thereof.

(b) Any change in the form, terms, or provisions of outstanding investment certificates or in the rights, privileges, or restrictions upon the holder or issuer thereof is deemed a sale and issuance of investment certificates.

(c) The company named in any order issued pursuant to subdivision (a) of this section may, within 15 days after receipt thereof, file with the commissioner its written request for hearing. The filing of the request shall not operate to postpone or suspend the effectiveness of any order issued by the commissioner unless otherwise directed by the commissioner. The commissioner shall, within 15 days after the receipt of the written request or at such later time as may be mutually agreed with the company, cause the matter to be heard and shall thereafter issue his final decision. The decision may be amended or set aside by the commissioner at any time.

(d) Every order or decision of the commissioner made pursuant to this section is subject to judicial review in accordance with law.

SEC. 15. Section 18341 of the Financial Code is repealed.

SEC. 16. Section 18563 of the Financial Code is amended to read:

18563. As used in this chapter, "premium financing" means the activities of a company engaging in the business of advancing money directly or indirectly to an insurer or producer at the request of an insured pursuant to the terms of a premium finance agreement, wherein the insured has assigned the unearned premiums, accrued dividends or loss payments as security for such advancement in payment of premiums on insurance contracts only, and acquiring premium finance agreements, and does not include the financing of

insurance contract premiums purchased in connection with the financing of goods and services. The amount of such advancement in payment of premiums must bear a reasonable relationship to the premium or premiums being financed.

SEC. 17. Section 18594 of the Financial Code is amended to read:

18594. Any corporation organized as an industrial loan company other than a premium finance agency shall conduct any insurance premium financing business under the authority of this chapter and it shall be subject to all of the provisions of this chapter in respect to such business, as if it were a premium finance agency.

CHAPTER 828

An act to amend Sections 5360.5, 5371.4, 21683.1, 185020, and 185032 of the Public Utilities Code, to amend Sections 136.5, 253.8, 256.1, and 599 of the Streets and Highways Code, to amend Sections 1807.5, 1808.5, 5901, 12804.9, 15250, 24604, 25104, 25258, 25803, 27454, and 40509.5 of, to add Sections 21455.6 and 40520 to, to repeal Sections 4608 and 35780.5 of, to repeal Article 5.5 (commencing with Section 4650) of Chapter 1 of Division 3 of, and to repeal Chapter 6 (commencing with Section 35900) of Division 15 of, the Vehicle Code, relating to transportation, and making an appropriation therefor.

[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 5360.5 of the Public Utilities Code is amended to read:

5360.5. (a) Charter-party carriers of passengers shall operate on a prearranged basis within this state.

(b) For purposes of this section, "prearranged basis" means that the transportation of the prospective passenger was arranged with the carrier by the passenger, or a representative of the passenger, either by written contract or telephone.

SEC. 2. Section 5371.4 of the Public Utilities Code is amended to read:

5371.4. (a) The governing body of any city, county, or city and county may not impose a fee on charter-party carriers operating limousines. However, the governing body of any city, county, or city and county may impose a business license fee on, and may adopt and enforce any reasonable rules and regulations pertaining to operations within its boundaries for, any charter-party carrier domiciled or maintaining a business office within that city, county, or city and county.

(b) The governing body of any airport may not impose vehicle safety, vehicle licensing, or insurance requirements on charter-party carriers operating limousines that are more burdensome than those imposed by the commission. However, the governing board of any airport may require a charter-party carrier operating limousines to obtain an airport permit for operating authority at the airport.

(c) Notwithstanding subdivisions (a) and (b), the governing body of any airport may adopt and enforce reasonable and nondiscriminatory local airport rules, regulations, and ordinances pertaining to access, use of streets and roads, parking, traffic control, passenger transfers, trip fees, and occupancy, and the use of buildings and facilities, that are applicable to charter-party carriers operating limousines on airport property.

(d) This section does not apply to any agreement entered into pursuant to Sections 21690.5 to 21690.9, inclusive, between the governing body of an airport and charter-party carriers operating limousines.

(e) The commission shall conduct an audit and review of the annual gross revenues earned by charter-party carriers operating limousines for the purpose of ascertaining whether the imposition of additional fees based on a charter-party carrier's gross annual revenues would place an undue administrative or financial burden on the charter-party carrier industry. The commission shall report its findings to the Legislature on or before June 30, 1992.

(f) The governing body of any airport shall not impose a fee based on gross receipts of charter-party carriers operating limousines.

(g) Notwithstanding subdivisions (a) to (f), inclusive, nothing in this section prohibits a city, county, city and county, or the governing body of any airport, from adopting and enforcing reasonable permit requirements, fees, rules, and regulations applicable to charter-party carriers of passengers other than those operating limousines.

(h) For the purposes of this section, "limousine" includes any luxury sedan, of either standard or extended length, with a seating capacity of not more than nine passengers including the driver, used in the transportation of passengers for hire on a prearranged basis within this state.

SEC. 3. Section 21683.1 of the Public Utilities Code is amended to read:

21683.1. (a) At the discretion of the commission, any balance remaining in the Aeronautics Account, after the payments made under Section 21682, may be used to provide a portion of the local match for federal Airport Improvement Program grants. Matching shall be provided only for grants at general aviation airports, or at airports that have been designated by the Federal Aviation Administration as reliever airports, as defined in Section 503(a)(19) of the federal Airport and Airway Improvement Act of 1982, as amended.

(b) Funds shall not be allocated by the commission until the federal grant offer is accepted by the public entity. Upon allocation by the commission, the department may pay a public entity an amount equal to 5 percent of the amount of a federal Airport Improvement Program grant. These funds are excluded from the requirements of Section 21684.

SEC. 4. Section 185020 of the Public Utilities Code is amended to read:

185020. (a) There is in state government a High-Speed Rail Authority consisting of nine members.

(b) The authority is composed of nine members as follows:

(1) Five members appointed by the Governor.

(2) Two members appointed by the Senate Committee on Rules.

(3) Two members appointed by the Speaker of the Assembly.

(c) Members of the authority shall hold office for terms of four years. A vacancy shall be filled by the appointing power making the original appointment, by appointing a member to serve the remainder of the term.

(d) (1) The authority shall be terminated on June 30, 2001, unless a financial plan for the implementation of a high-speed rail system has been approved by the Legislature by the enactment of a statute, or by the voters, pursuant to Section 185036, prior to that date.

(2) If the authority exists after June 30, 2001, the appointing powers shall, by lot, select members' terms in such a way that new appointments are evenly staggered.

(e) Members of the authority are subject to the Political Reform Act of 1974 (Title 9 (commencing with Section 81000)).

(f) From among its members, the authority shall elect a chairperson, who shall preside at all meetings of the authority, and a vice chairperson to preside in the absence of the chairperson.

(g) Five members of the authority constitute a quorum for taking any action by the authority.

SEC. 5. Section 185032 of the Public Utilities Code is amended to read:

185032. (a) (1) The authority shall prepare a plan for the construction and operation of a high-speed train network for the state, consistent with and continuing the work of the Intercity High-Speed Rail Commission conducted prior to January 1, 1997. The plan shall include an appropriate network of conventional intercity passenger rail service and shall be coordinated with existing and planned commuter and urban rail systems.

(2) The authorization and responsibility for planning, construction, and operation of high-speed passenger train service at speeds exceeding 100 miles per hour in this state is exclusively granted to the authority.

(3) Except as provided in paragraph (2), nothing in this subdivision precludes other local, regional, or state agencies from

exercising powers provided by law with regard to planning or operating, or both, passenger rail service.

(b) The plan, upon completion, shall be either submitted to the Legislature and the Governor for approval by the enactment of a statute or to the voters of the state for approval.

SEC. 6. Section 136.5 of the Streets and Highways Code is amended to read:

136.5. (a) The contracts referred to in Sections 135 and 136 are not subject to the State Contract Act (Chapter 3 (commencing with Section 14250), Part 5, Division 3, Title 2 of the Government Code). Except for emergency work of the type described in subdivision (b), whenever the estimated amount of a contract exceeds two thousand five hundred dollars ($2,500), it shall be awarded to the lowest responsible bidder, after competitive bidding on any reasonable notice that the department may prescribe. Posting of notice for five days in a public place in the district office within which the work is to be done, or the equipment used, is sufficient. Those contracts shall be subject to the applicable payment bond provisions of Chapter 7 (commencing with Section 3247) of Part 4 of Division 3 of the Civil Code. The department may require faithful performance bonds when considered necessary. The advertisement for each contract shall state whether or not a bond shall be required.

(b) In cases of emergency work necessitated by the imminence or occurrence of a landslide, flood, storm damage, accident, or other casualty, tools or equipment may be rented for a period of not to exceed 60 days without competitive bidding, and the department may waive the requirements of Chapter 7 (commencing with Section 3247) of Part 4 of Division 3 of the Civil Code to the extent that a contractor may commence performance of the work under the contract for the rental of tools or equipment prior to filing a payment bond with the department. In that case, no payment shall be made to the contractor until a payment bond covering all work of the contract is filed with the department.

SEC. 7. Section 253.8 of the Streets and Highways Code is amended to read:

253.8. The California freeway and expressway system shall also include:

Route 227 from Route 1 south of Oceano to Route 101 near Arroyo Grande.

Route 244 from Route 80 to Auburn Boulevard.

Route 299 fromRoute 101 near Arcata to Route 395 at Alturas.

Route 395 from:

(a) Route 15 near Cajon Pass to the Nevada state line.

(b) Nevada state line northwest of Reno to Route 36 near Johnstonville.

(c) Route 36 near Termo to the Oregon state line.

Route 905 from Route 5 near the south end of San Diego Bay to the international boundary southerly of Brown Field.

SEC. 8. Section 256.1 of the Streets and Highways Code is amended to read:

256.1. Prior to recommending to the Legislature the deletion of a highway, or a portion thereof, from the state highway system, the commission or the department shall hold a public hearing on, and shall give written notices to the legislative bodies of the cities and counties located in the affected area of, the proposed recommendation, and shall publish notice of the public hearing in a newspaper of general circulation in the areas affected by the proposed deletion. The commission or the department may, at its own option, because of controversy or lack of local consensus, hold the hearing at a location which is reasonably convenient to the communities affected by the proposed deletion, to the general public, and to the commission or the department in the discharge of its regular business.

SEC. 9. Section 599 of the Streets and Highways Code is amended to read:

599. Route 299 is from:

(a) Route 101 near Arcata to Route 395 at Alturas.

(b) Route 395 near Alturas to the Nevada state line via Cedarville.

SEC. 10. 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. 11. Section 1808.5 of the Vehicle Code is amended to read:

1808.5. Except as provided in Section 22511.58, all records of the department relating to the physical or mental condition of any person, and convictions of any offense involving the use or possession of controlled substances under Division 10 (commencing with Section 11000) of the Health and Safety Code not arising from

circumstances involving a motor vehicle, are confidential and not open to public inspection.

SEC. 12. Section 4608 of the Vehicle Code is repealed.

SEC. 13. Section 5901 of the Vehicle Code is amended to read:

5901. (a) Every dealer or lessor-retailer, upon transferring by sale, lease, or otherwise any vehicle, whether new or used, of a type subject to registration under this code, shall, not later than the end of the fifth calendar day thereafter not counting the day of sale, give written notice of the transfer to the department at its headquarters upon an appropriate form provided by it.

(b) Except as otherwise provided in this subdivision or in subdivision (c), the dealer or lessor-retailer shall enter on the form and pursuant to Section 32705(a) of Title 49 of the United States Code, on the ownership certificate, the actual mileage of the vehicle as indicated by the vehicle's odometer at the time of the transfer. However, if the vehicle dealer or lessor-retailer has knowledge that the mileage displayed on the odometer is incorrect, the licensee shall indicate on the form on which the mileage is entered that the mileage registered by the odometer is incorrect. A vehicle dealer or lessor-retailer need not give the notice when selling or transferring a new unregistered vehicle to a dealer or lessor-retailer.

(c) When the dealer or lessor-retailer is not in possession of the vehicle that is sold or transferred, the person in physical possession of the vehicle shall give the information required by subdivision (b).

(d) A sale is deemed completed and consummated when the purchaser of the vehicle has paid the purchase price, or, in lieu thereof, has signed a purchase contract or security agreement, and has taken physical possession or delivery of the vehicle.

SEC. 14. Article 5.5 (commencing with Section 4650) of Chapter 1 of Division 3 of the Vehicle Code is repealed.

SEC. 15. Section 12804.9 of the Vehicle Code, as amended by Section 1 of Chapter 819 of the Statutes of 1996, is amended to read:

12804.9. (a) (1) The examination shall include all of the following:

(A) A test of the applicant's knowledge and understanding of the provisions of this code governing the operation of vehicles upon the highways.

(B) A test of the applicant's ability to read and understand simple English used in highway traffic and directional signs.

(C) A test of the applicant's understanding of traffic signs and signals, including the bikeway signs, markers, and traffic control devices established by the Department of Transportation.

(D) An actual demonstration of the applicant's ability to exercise ordinary and reasonable control in operating a motor vehicle by driving it under the supervision of an examining officer. The applicant shall submit to an examination appropriate to the type of motor vehicle or combination of vehicles he or she desires a license to drive, except that the department may waive the driving test part

of the examination of any applicant who holds a valid license issued by another state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico. The examining officer may request to see evidence of financial responsibility for the vehicle prior to supervising the demonstration of the applicant's ability to operate the vehicle. The examining officer may refuse to examine an applicant who is unable to provide proof of financial responsibility for the vehicle, unless proof of financial responsibility is not required by this code.

(E) A test of the hearing and eyesight of the applicant, and of other matters that may be necessary to determine the applicant's mental and physical fitness to operate a motor vehicle upon the highways, and whether any grounds exist for refusal of a license under this code.

(2) The examination for a class A or class B license under subdivision (b) shall also include a report of a medical examination of the applicant given not more than two years prior to the date of the application by a health care professional. As used in this subdivision, "health care professional" means a person who is licensed, certified, or registered in accordance with applicable state laws and regulations to practice medicine and perform physical examinations in the United States of America. Health care professionals are doctors of medicine, doctors of osteopathy, physician assistants, and advanced practice nurses, or doctors of chiropractic who are clinically competent to perform the medical examination presently required of motor carrier drivers by the Federal Highway Administration. The report shall be on a form approved by the department, the Federal Highway Administration, or the Federal Aviation Administration. In establishing the requirements, consideration may be given to the standards presently required of motor carrier drivers by the Federal Highway Administration.

(3) Any physical defect of the applicant, which, in the opinion of the department, is compensated for to ensure safe driving ability, shall not prevent the issuance of a license to the applicant.

(b) Beginning on January 1, 1989, in accordance with the following classifications, any applicant for a driver's license shall be required to submit to an examination appropriate to the type of motor vehicle or combination of vehicles the applicant desires a license to drive:

(1) Class A includes the following:

(A) Any combination of vehicles, if any vehicle being towed has a gross vehicle weight rating of more than 10,000 pounds.

(B) Any vehicle towing more than one vehicle.

(C) Any trailer bus.

(D) The operation of all vehicles under class B and class C.

(2) Class B includes the following:

(A) Any single vehicle with a gross vehicle weight rating of more than 26,000 pounds.

(B) Any single vehicle with three or more axles, except any three-axle vehicle weighing less than 6,000 pounds.

(C) Any bus except a trailer bus.

(D) Any farm labor vehicle.

(E) Any single vehicle with three or more axles or a gross vehicle weight rating of more than 26,000 pounds towing another vehicle with a gross vehicle weight rating of 10,000 pounds or less.

(F) The operation of all vehicles covered under class C.

(3) Class C includes the following:

(A) Any two-axle vehicle with a gross vehicle weight rating of 26,000 pounds or less, including when the vehicle is towing a trailer or semitrailer with a gross vehicle weight rating of 10,000 pounds or less.

(B) Notwithstanding subparagraph (A), any two-axle vehicle weighing 4,000 pounds or more unladen when towing a trailer coach not exceeding 9,000 pounds gross.

(C) Any housecar.

(D) Any three-axle vehicle weighing 6,000 pounds or less gross.

(E) Any housecar or vehicle towing another vehicle with a gross vehicle weight rating of 10,000 pounds or less, including when a tow dolly is used. No vehicle shall tow another vehicle in violation of Section 21715.

(F) (i) Any two-axle vehicle weighing 4,000 pounds or more unladen when towing either a trailer coach or a fifth-wheel travel trailer not exceeding 10,000 pounds gross vehicle weight rating, when the towing of the trailer is not for compensation.

(ii) Any two-axle vehicle weighing 4,000 pounds or more unladen when towing a fifth-wheel travel trailer exceeding 10,000 pounds, but not exceeding 15,000 pounds, gross vehicle weight rating, when the towing of the trailer is not for compensation, and if the person has passed a specialized written examination provided by the department relating to the knowledge of this code and other safety aspects governing the towing of recreational vehicles upon the highway.

The authority to operate combinations of vehicles under this subparagraph shall be granted by endorsement on a class C license upon completion of that written examination.

(G) Any vehicle or combination of vehicles with a gross combination weight rating or a gross vehicle weight rating, as those terms are defined in subdivisions (g) and (h), respectively, of Section 15210, of 26,000 pounds or less, if all of the following conditions are met:

(i) Is operated by a farmer, an employee of a farmer, or an instructor credentialed in agriculture as part of an instructional program in agriculture at the high school, community college, or university level.

(ii) Is used exclusively in the conduct of agricultural operations.

(iii) Is not used in the capacity of a for-hire carrier or for compensation.

(H) Any combination of vehicles with a gross combination weight rating, as defined in subdivision (g) of Section 15210, of 26,000 pounds or less when towing a boat trailer under the following conditions:

(i) The combination of vehicles is used to transport a boat for recreational purposes or to and from a place of repair.

(ii) The combination of vehicles is not used in the operations of a common or contract carrier or in the course of any business endeavor.

(iii) The towing of the trailer is not for compensation.

(iv) The combination of vehicles and its load are not of a size that requires a permit pursuant to Section 35780.

(I) Class C does not include any two-wheel motorcycle or any two-wheel motor-driven cycle.

(4) Class M1. Any two-wheel motorcycle or motor-driven cycle. Authority to operate vehicles included in a class M1 license may be granted by endorsement on a class A, B, or C license upon completion of an appropriate examination.

(5) Class M2. Any motorized bicycle or moped, or any bicycle with an attached motor, except a motorized bicycle described in subdivision (b) of Section 406. Authority to operate vehicles included in class M2 may be granted by endorsement on a class A, B, or C license upon completion of an appropriate examination. Persons holding a class M1 license or endorsement may operate vehicles included in class M2 without further examination.

(c) No driver's license or driver certificate shall be valid for operating any commercial motor vehicle, as defined in subdivision (b) of Section 15210, any other motor vehicle defined in paragraph (1) or (2) of subdivision (b), or any other vehicle requiring a driver to hold any driver certificate or any driver's license endorsement under Section 15275, unless a medical certificate approved by the department, the Federal Highway Administration, or the Federal Aviation Administration, which has been issued within two years of the date of the operation of that vehicle, is within the licensee's immediate possession, and a copy of the medical examination report from which the certificate was issued is on file with the department. Otherwise, the license shall be valid only for operating class C vehicles which are not commercial vehicles, as defined in subdivision (b) of Section 15210, and for operating class M1 or M2 vehicles, if so endorsed, which are not commercial vehicles, as defined in subdivision (b) of Section 15210.

(d) A license or driver certificate issued prior to the enactment of Chapter 7 (commencing with Section 15200) shall be valid to operate the class or type of vehicles specified under the law in existence prior to that enactment until the license or certificate expires or is otherwise suspended, revoked, or canceled.

(e) The department may accept a certificate of driving skill that is issued by an employer, authorized by the department to issue a certificate under Section 15250, of the applicant, in lieu of a driving test, on class A or B applications, if the applicant has first qualified for a class C license and has met the other examination requirements for the license for which he or she is applying. The certificate may be submitted as evidence of the applicant's skill in the operation of the types of equipment covered by the license for which he or she is applying.

(f) The department may accept a certificate of competence in lieu of a driving test on class M1 or M2 applications, when the certificate is issued by a law enforcement agency for its officers who operate class M1 or M2 vehicles in their duties, if the applicant has met the other examination requirements for the license for which he or she is applying.

(g) The department may accept a certificate of satisfactory completion of a novice motorcyclist training program approved by the commissioner pursuant to Section 2932 in lieu of a driving test on class M1 or M2 applications, if the applicant has met the other examination requirements for the license for which he or she is applying. The department shall review and approve the written and driving test used by a program to determine whether the program may issue a certificate of completion.

(h) Notwithstanding subdivision (b), any person holding a valid California driver's license of any class may operate a short-term rental motorized bicycle without taking any special examination for the operation of a motorized bicycle, and without having a class M2 endorsement on that license. As used in this paragraph, "short-term" means 48 hours or less.

(i) No person under the age of 21 years shall be issued a class M1 or M2 license or endorsement unless he or she provides evidence satisfactory to the department of completion of a motorcycle safety training program that is operated pursuant to Article 2 (commencing with Section 2930) of Chapter 5 of Division 2.

(j) Drivers of vanpool vehicles may operate with class C licenses but shall possess evidence of a medical examination required for a class B license when operating vanpool vehicles. In order to be eligible to drive the vanpool vehicle, the driver shall keep in the vanpool vehicle a statement, signed under penalty of perjury, that he or she has not been convicted of reckless driving, drunk driving, or a hit-and-run offense in the last five years.

(k) During the implementation of this section, from January 1, 1989, through December 31, 1992, provisions of this code pertaining to persons holding class 1, 2, 3, or 4 licenses pursuant to Section 12804, shall apply to persons holding class A, B, C, M1, or M2 licenses pursuant to this section, to the extent that class A, B, C, M1, or M2 vehicles under this section fall within the definition of class 1, 2, 3, or 4 vehicles under Section 12804.

(*l*) A class M license issued between January 1, 1989, and December 31, 1992, shall permit the holder to operate any motorcycle, motor-driven cycle, or motorized bicycle until the expiration of the license.

(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. 15.5. Section 12804.9 of the Vehicle Code, as amended by Section 1 of Chapter 819 of the Statutes of 1996, is amended to read:

12804.9. (a) (1) The examination shall include all of the following:

(A) A test of the applicant's knowledge and understanding of the provisions of this code governing the operation of vehicles upon the highways.

(B) A test of the applicant's ability to read and understand simple English used in highway traffic and directional signs.

(C) A test of the applicant's understanding of traffic signs and signals, including the bikeway signs, markers, and traffic control devices established by the Department of Transportation.

(D) An actual demonstration of the applicant's ability to exercise ordinary and reasonable control in operating a motor vehicle by driving it under the supervision of an examining officer. The applicant shall submit to an examination appropriate to the type of motor vehicle or combination of vehicles he or she desires a license to drive, except that the department may waive the driving test part of the examination for any applicant who submits a license issued by another state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico if the department verifies through any acknowledged national driver record data source that there are no stops, holds, or other impediments to its issuance. The examining officer may request to see evidence of financial responsibility for the vehicle prior to supervising the demonstration of the applicant's ability to operate the vehicle. The examining officer may refuse to examine an applicant who is unable to provide proof of financial responsibility for the vehicle, unless proof of financial responsibility is not required by this code.

(E) A test of the hearing and eyesight of the applicant, and of other matters that may be necessary to determine the applicant's mental and physical fitness to operate a motor vehicle upon the highways, and whether any grounds exist for refusal of a license under this code.

(2) The examination for a class A or class B license under subdivision (b) shall also include a report of a medical examination of the applicant given not more than two years prior to the date of the application by a health care professional. As used in this subdivision, "health care professional" means a person who is licensed, certified, or registered in accordance with applicable state laws and regulations to practice medicine and perform physical

examinations in the United States of America. Health care professionals are doctors of medicine, doctors of osteopathy, physician assistants, and advanced practice nurses, or doctors of chiropractic who are clinically competent to perform the medical examination presently required of motor carrier drivers by the Federal Highway Administration. The report shall be on a form approved by the department, the Federal Highway Administration, or the Federal Aviation Administration. In establishing the requirements, consideration may be given to the standards presently required of motor carrier drivers by the Federal Highway Administration.

(3) Any physical defect of the applicant, which, in the opinion of the department, is compensated for to ensure safe driving ability, shall not prevent the issuance of a license to the applicant.

(b) Beginning on January 1, 1989, in accordance with the following classifications, any applicant for a driver's license shall be required to submit to an examination appropriate to the type of motor vehicle or combination of vehicles the applicant desires a license to drive:

(1) Class A includes the following:

(A) Any combination of vehicles, if any vehicle being towed has a gross vehicle weight rating of more than 10,000 pounds.

(B) Any vehicle towing more than one vehicle.

(C) Any trailer bus.

(D) The operation of all vehicles under class B and class C.

(2) Class B includes the following:

(A) Any single vehicle with a gross vehicle weight rating of more than 26,000 pounds.

(B) Any single vehicle with three or more axles, except any three-axle vehicle weighing less than 6,000 pounds.

(C) Any bus except a trailer bus.

(D) Any farm labor vehicle.

(E) Any single vehicle with three or more axles or a gross vehicle weight rating of more than 26,000 pounds towing another vehicle with a gross vehicle weight rating of 10,000 pounds or less.

(F) The operation of all vehicles covered under class C.

(3) Class C includes the following:

(A) Any two-axle vehicle with a gross vehicle weight rating of 26,000 pounds or less, including when the vehicle is towing a trailer or semitrailer with a gross vehicle weight rating of 10,000 pounds or less.

(B) Notwithstanding subparagraph (A), any two-axle vehicle weighing 4,000 pounds or more unladen when towing a trailer coach not exceeding 9,000 pounds gross.

(C) Any housecar.

(D) Any three-axle vehicle weighing 6,000 pounds or less gross.

(E) Any housecar or vehicle towing another vehicle with a gross vehicle weight rating of 10,000 pounds or less, including when a tow

dolly is used. No vehicle shall tow another vehicle in violation of Section 21715.

(F) (i) Any two-axle vehicle weighing 4,000 pounds or more unladen when towing either a trailer coach or a fifth-wheel travel trailer not exceeding 10,000 pounds gross vehicle weight rating, when the towing of the trailer is not for compensation.

(ii) Any two-axle vehicle weighing 4,000 pounds or more unladen when towing a fifth-wheel travel trailer exceeding 10,000 pounds, but not exceeding 15,000 pounds, gross vehicle weight rating, when the towing of the trailer is not for compensation, and if the person has passed a specialized written examination provided by the department relating to the knowledge of this code and other safety aspects governing the towing of recreational vehicles upon the highway.

The authority to operate combinations of vehicles under this subparagraph shall be granted by endorsement on a class C license upon completion of that written examination.

(G) Any vehicle or combination of vehicles with a gross combination weight rating or a gross vehicle weight rating, as those terms are defined in subdivisions (g) and (h), respectively, of Section 15210, of 26,000 pounds or less, if all of the following conditions are met:

(i) Is operated by a farmer, an employee of a farmer, or an instructor credentialed in agriculture as part of an instructional program in agriculture at the high school, community college, or university level.

(ii) Is used exclusively in the conduct of agricultural operations.

(iii) Is not used in the capacity of a for-hire carrier or for compensation.

(H) Any combination of vehicles with a gross combination weight rating, as defined in subdivision (g) of Section 15210, of 26,000 pounds or less when towing a boat trailer under the following conditions:

(i) The combination of vehicles is used to transport a boat for recreational purposes or to and from a place of repair.

(ii) The combination of vehicles is not used in the operations of a common or contract carrier or in the course of any business endeavor.

(iii) The towing of the trailer is not for compensation.

(iv) The combination of vehicles and its load are not of a size that requires a permit pursuant to Section 35780.

(I) Class C does not include any two-wheel motorcycle or any two-wheel motor-driven cycle.

(4) Class M1. Any two-wheel motorcycle or motor-driven cycle. Authority to operate vehicles included in a class M1 license may be granted by endorsement on a class A, B, or C license upon completion of an appropriate examination.

(5) Class M2. Any motorized bicycle or moped, or any bicycle with an attached motor, except a motorized bicycle described in

subdivision (b) of Section 406. Authority to operate vehicles included in class M2 may be granted by endorsement on a class A, B, or C license upon completion of an appropriate examination. Persons holding a class M1 license or endorsement may operate vehicles included in class M2 without further examination.

(c) No driver's license or driver certificate shall be valid for operating any commercial motor vehicle, as defined in subdivision (b) of Section 15210, any other motor vehicle defined in paragraph (1) or (2) of subdivision (b), or any other vehicle requiring a driver to hold any driver certificate or any driver's license endorsement under Section 15275, unless a medical certificate approved by the department, the Federal Highway Administration, or the Federal Aviation Administration, that has been issued within two years of the date of the operation of that vehicle, is within the licensee's immediate possession, and a copy of the medical examination report from which the certificate was issued is on file with the department. Otherwise, the license shall be valid only for operating class C vehicles that are not commercial vehicles, as defined in subdivision (b) of Section 15210, and for operating class M1 or M2 vehicles, if so endorsed, that are not commercial vehicles, as defined in subdivision (b) of Section 15210.

(d) A license or driver certificate issued prior to the enactment of Chapter 7 (commencing with Section 15200) shall be valid to operate the class or type of vehicles specified under the law in existence prior to that enactment until the license or certificate expires or is otherwise suspended, revoked, or canceled.

(e) The department may accept a certificate of driving skill that is issued by an employer, authorized by the department to issue a certificate under Section 15250, of the applicant, in lieu of a driving test, on class A or B applications, if the applicant has first qualified for a class C license and has met the other examination requirements for the license for which he or she is applying. The certificate may be submitted as evidence of the applicant's skill in the operation of the types of equipment covered by the license for which he or she is applying.

(f) The department may accept a certificate of competence in lieu of a driving test on class M1 or M2 applications, when the certificate is issued by a law enforcement agency for its officers who operate class M1 or M2 vehicles in their duties, if the applicant has met the other examination requirements for the license for which he or she is applying.

(g) The department may accept a certificate of satisfactory completion of a novice motorcyclist training program approved by the commissioner pursuant to Section 2932 in lieu of a driving test on class M1 or M2 applications, if the applicant has met the other examination requirements for the license for which he or she is applying. The department shall review and approve the written and

driving test used by a program to determine whether the program may issue a certificate of completion.

(h) Notwithstanding subdivision (b), any person holding a valid California driver's license of any class may operate a short-term rental motorized bicycle without taking any special examination for the operation of a motorized bicycle, and without having a class M2 endorsement on that license. As used in this paragraph, "short-term" means 48 hours or less.

(i) No person under the age of 21 years shall be issued a class M1 or M2 license or endorsement unless he or she provides evidence satisfactory to the department of completion of a motorcycle safety training program that is operated pursuant to Article 2 (commencing with Section 2930) of Chapter 5 of Division 2.

(j) Drivers of vanpool vehicles may operate with class C licenses but shall possess evidence of a medical examination required for a class B license when operating vanpool vehicles. In order to be eligible to drive the vanpool vehicle, the driver shall keep in the vanpool vehicle a statement, signed under penalty of perjury, that he or she has not been convicted of reckless driving, drunk driving, or a hit and run offense in the last five years.

(k) A class M license issued between January 1, 1989, and December 31, 1992, shall permit the holder to operate any motorcycle, motor-driven cycle, or motorized bicycle until the expiration of the license.

(*l*) 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 15250 of the Vehicle Code is amended to read:

15250. (a) No person shall operate a commercial motor vehicle unless that person has in his or her immediate possession a valid commercial driver's license of the appropriate class.

(b) No person may be issued a commercial driver's license until he or she has passed a written and driving test for the operation of a commercial motor vehicle which complies with the minimum federal standards established by the federal Commercial Motor Vehicle Safety Act of 1986 (P.L. 99-570) and Part 383 of Title 49 of the Code of Federal Regulations, and has satisfied all other requirements of that act as well as any other requirements imposed by this code.

(c) The tests shall be prescribed and conducted by or under the direction of the department. The department may allow a third-party tester to administer the driving test part of the examination required under this section and Section 15275 if all of the following conditions are met:

(1) The tests given by the third party are the same as those which would otherwise be given by the department.

(2) The third party has an agreement with the department including, but not limited to, the following provisions:

(A) Authorization for the Federal Highway Administration, or its representative, and the department, or its representative, to conduct random examinations, inspections, and audits without prior notice.

(B) Permission for the department, or its representative, to conduct onsite inspections at least annually.

(C) A requirement that all third-party testers meet the same qualification and training standards as the department's examiners, to the extent necessary to conduct the driving skill tests in compliance with the requirements of Part 383 of Title 49 of the Code of Federal Regulations.

(D) The department may cancel, suspend, or revoke the agreement with a third-party tester if the third-party tester fails to comply with the standards for the commercial driver's license testing program, or with any other term of the third-party agreement, upon 15 days prior written notice of the action to cancel, suspend, or revoke the agreement by the department to the third party. Any action to appeal or review any order of the department canceling, suspending, or revoking a third-party testing agreement shall be brought in a court of competent jurisdiction under Section 1085 of the Code of Civil Procedure, or as otherwise permitted by the laws of this state. The action shall be commenced within 90 days from the effective date of the order.

(E) Any third-party tester whose agreement has been canceled pursuant to subparagraph (D) may immediately apply for a third-party testing agreement.

(F) A suspension of a third-party testing agreement pursuant to subparagraph (D) shall be for a term of less than 12 months as determined by the department. After the period of suspension, the agreement shall be reinstated upon request of the third-party tester.

(G) A revocation of a third-party testing agreement pursuant to subparagraph (D) shall be for a term of not less than one year. A third-party tester may apply for a new third-party testing agreement after the period of revocation and upon submission of proof of correction of the circumstances causing the revocation.

(H) Authorization for the department to charge the third-party tester a fee, as determined by the department, which is sufficient to defray the actual costs incurred by the department for administering and evaluating the third-party testing program, and for carrying out any other activities deemed necessary by the department to ensure sufficient training for the drivers participating in the program.

(3) Except as provided in Section 15250.3, the tests given by the third party shall not be accepted in lieu of tests prescribed and conducted by the department for applicants for a passenger vehicle endorsement specified in paragraph (2) of subdivision (a) of Section 15278, if the applicant operates or will operate a tour bus.

(d) Commercial driver license applicants who take and pass driving tests administered by a third party shall provide the department with certificates of driving skill satisfactory to the

department that the applicant has successfully passed the driving tests administered by the third party.

(e) Implementation dates for the issuance of a commercial driver's license pursuant to this chapter may be established by the department as it determines is necessary to accomplish an orderly commercial driver license program.

SEC. 17. Section 21455.6 is added to the Vehicle Code, to read:

21455.6. (a) A city council or county board of supervisors shall conduct a public hearing on the proposed use of automated enforcement systems authorized pursuant to Section 21455.5 prior to that city or county entering into a contract for the use of those systems.

(b) The authorization in Section 21455.5 to use automated enforcement systems does not authorize the use of photo radar by any jurisdiction.

SEC. 18. Section 24604 of the Vehicle Code is amended to read:

24604. Whenever the load upon any vehicle extends, or whenever any integral part of any vehicle projects, to the rear four feet or more beyond the bed or body of the vehicle, there shall be displayed at the extreme end of the load or projecting part of the vehicle during darkness, in addition to the required taillamp, two red lights with a bulb rated not in excess of six candlepower plainly visible from a distance of at least 500 feet to the sides and rear. At any other time there shall be displayed at the extreme end of the load or projecting part of the vehicle a solid red or fluorescent orange flag or cloth not less than 12 inches square.

SEC. 19. Section 25104 of the Vehicle Code is amended to read:

25104. Any vehicle or equipment that requires a permit issued pursuant to Article 6 (commencing with Section 35780) of Chapter 5 of Division 15 because it is wider than permitted under Chapter 2 (commencing with Section 35100) of Division 15 shall display a solid red or fluorescent orange flag or cloth not less than 12 inches square at the extreme left front and left rear of the vehicle or equipment, if the vehicle or equipment is being operated other than during darkness.

SEC. 20. Section 25258 of the Vehicle Code is amended to read:

25258. (a) An authorized emergency vehicle operating under the conditions specified in Section 21055 may display a flashing white light from a gaseous discharge lamp designed and used for the purpose of controlling official traffic control signals.

(b) An authorized emergency vehicle used by a peace officer, as defined in Section 830.1 of, subdivision (a), (b), (c), (d), (e), (f), (g), or (i) of Section 830.2 of, subdivision (b) of Section 830.31 of, subdivision (a) or (b) of Section 830.32 of, Section 830.33 of, subdivision (a) of Section 830.36 of, subdivision (a) of Section 830.4 of, or Section 830.6 of, the Penal Code, in the performance of the peace officer's duties, may, in addition, display a steady or flashing blue warning light visible from the front, sides, or rear of the vehicle.

SEC. 21. Section 25803 of the Vehicle Code is amended to read:

25803. (a) All vehicles not otherwise required to be equipped with headlamps, rear lights, or reflectors by this chapter shall, if operated on a highway during darkness, be equipped with a lamp exhibiting a red light visible from a distance of 500 feet to the rear of the vehicle. In addition, all of these vehicles operated alone or as the first vehicle in a combination of vehicles, shall be equipped with at least one lighted lamp exhibiting a white light visible from a distance of 500 feet to the front of the vehicle.

(b) A vehicle shall also be equipped with an amber reflector on the front near the left side and a red reflector on the rear near the left side. The reflectors shall be mounted on the vehicle not lower than 16 inches nor higher than 60 inches above the ground and so designed and maintained as to be visible during darkness from all distances within 500 feet from the vehicle when directly in front of a motor vehicle displaying lawful lighted headlamps undimmed.

(c) In addition, if a vehicle described in subdivision (a) or the load thereon has a total outside width in excess of 100 inches there shall be displayed during darkness at the left outer extremity at least one amber light visible under normal atmospheric conditions from a distance of 500 feet to the front, sides and rear. At all other times there shall be displayed at the left outer extremity a solid red or florescent orange flag or cloth not less than 12 inches square.

SEC. 22. Section 27454 of the Vehicle Code is amended to read:

27454. No tire on any vehicle upon any highway shall have on its periphery any block, stud, flange, cleat, ridge, bead, or any other protuberance of metal or wood that projects beyond the tread of the traction surface of the tire.

This section does not apply to any of the following:

(a) Tire traction devices of reasonable size used to prevent skidding when upon wet surfaces or when upon snow or ice.

(b) Pneumatic tires that have embedded therein wire not to exceed 0.075 of an inch in diameter and that are so constructed that under no conditions will the percentage of metal in contact with the roadway exceed 5 percent of the total tire area in contact with the roadway, except that during the first 1,000 miles of use or operation of the tire, the metal in contact with the roadway may exceed 5 percent of the tire area in contact with the roadway, but shall in no event exceed 20 percent of the area.

(c) Vehicles operated upon unimproved roadways when necessary in the construction or repair of highways.

(d) Traction engines or tractors when operated under the conditions of a permit first obtained from the Department of Transportation.

(e) Pneumatic tires containing metal-type studs of tungsten carbide or other suitable material that are so inserted or constructed that under no conditions will the number of studs or the percentage of metal in contact with the roadway exceed 3 percent of the total tire

area in contact with the roadway, between November 1 and April 30 of each year. The commissioner, after consultation with the Department of Transportation, may extend the period during which studded pneumatic tires may be used in any area of the state for the protection of the public because of adverse weather conditions.

(f) Pneumatic tires used on an authorized emergency vehicle, as defined in Section 165, containing metal-type studs of tungsten carbide or other suitable material, if the studs are so inserted or constructed that under no conditions will the number of studs or the percentage of metal in contact with the roadway exceed 3 percent of the total tire area in contact with the roadway. Notwithstanding subdivision (e), authorized emergency vehicles are permitted the unrestricted use of studded pneumatic tires throughout the year.

SEC. 23. Section 35780.5 of the Vehicle Code is repealed.

SEC. 24. Chapter 6 (commencing with Section 35900) of Division 15 of the Vehicle Code is repealed.

SEC. 25. Section 40509.5 of the Vehicle Code is amended to read:

40509.5. (a) Except as required under subdivision (c), if, with respect to an offense described in subdivision (e), any person has, for a period of 15 or more days, violated his or her written promise to appear or a lawfully granted continuance of his or her promise to appear in court or before the person authorized to receive a deposit of bail, or violated an order to appear in court, including, but not limited to, a written notice to appear issued in accordance with Section 40518, the magistrate or clerk of the court may give notice of the failure to appear to the department for any violation of this code, any violation that can be heard by a juvenile traffic hearing referee pursuant to Section 256 of the Welfare and Institutions Code, or any violation of any other statute relating to the safe operation of a vehicle, except violations not required to be reported pursuant to paragraphs (1), (2), (3), (6), and (7) of subdivision (b) of Section 1803. The notice shall be given within 60 days of the failure to appear. If thereafter the case in which the promise was given is adjudicated or the person who has violated the court order appears in court and satisfies the order of the court, the magistrate or clerk of the court hearing the case shall sign and file with the department a certificate to that effect.

(b) If, with respect to an offense described in subdivision (e), any person has, for a period of 15 or more days, willfully failed to pay a lawfully imposed fine within the time authorized by the court or to pay a fine pursuant to subdivision (a) of Section 42003, the magistrate or clerk of the court may give notice of the fact to the department for any violation, except violations not required to be reported pursuant to paragraphs (1), (2), (3), (6), and (7) of subdivision (b) of Section 1803. If thereafter the fine is fully paid, the magistrate or clerk of the court shall issue and file with the department a certificate showing that the fine has been paid.

(c) If any person charged with a violation of Section 23152 or 23153, or Section 191.5 of the Penal Code, or paragraph (3) of subdivision (c) of Section 192 of that code has, for a period of 15 or more days, violated a lawfully granted continuance of his or her promise to appear in court or is released from custody on his or her own recognizance and fails to appear in court or before the person authorized to receive a deposit of bail, or violated an order to appear in court, the magistrate or clerk of the court shall give notice to the department of the failure to appear. The notice shall be given within 60 days of the failure to appear. If thereafter the case in which the notice was given is adjudicated or the person who has violated the court order appears in court or otherwise satisfies the order of the court, the magistrate or clerk of the court hearing the case shall prepare and forward to the department a certificate to that effect.

(d) Except as required under subdivision (c), the court shall mail a courtesy warning notice to the defendant by first-class mail at the address shown on the notice to appear, at least 10 days before sending a notice to the department under this section.

(e) If the court notifies the department of a failure to appear or pay a fine pursuant to subdivision (a) or (b), no arrest warrant shall be issued for an alleged violation of subdivision (a) or (b) of Section 40508 or of a court order issued pursuant to subdivision (a) of Section 42003, unless one of the following criteria is met:

(1) The alleged underlying offense is a misdemeanor or felony.

(2) The alleged underlying offense is a violation of any provision of Division 12 (commencing with Section 24000), Division 13 (commencing with Section 29000), or Division 15 (commencing with Section 35000), required to be reported pursuant to Section 1803.

(3) The driver's record does not show that the defendant has a valid California driver's license.

(4) The driver's record shows an unresolved charge that the defendant is in violation of his or her written promise to appear for one or more other alleged violations of the law.

(f) Except as required under subdivision (c), in addition to the proceedings described in this section, the court may elect to notify the department pursuant to subdivision (c) of Section 40509.

(g) Whenever any person has for a period of 15 or more days willfully failed to obey any court order concerning a violation of this code other than failure to appear or pay a fine, the department shall suspend the person's privilege to operate a motor vehicle until compliance with the court order is shown. The magistrate or clerk of the court may give notice of any noncompliance of a court order to the department. The suspension shall not become effective until 45 days after the giving of written notice by the department to the person or until the end of any stay of suspension. However, this subdivision does not apply to court orders concerning violations enumerated in paragraphs (1), (2), (3), (6), and (7) of subdivision (b) of Section 1803.

(h) This section is applicable to courts which have elected to provide notice pursuant to subdivision (b). The method of commencing or terminating an election to proceed under this section shall be prescribed by the department.

(i) Any violation subject to Section 40001, which is the responsibility of the owner of the vehicle, shall not be reported under this section.

SEC. 25.5. Section 40509.5 of the Vehicle Code is amended to read:

40509.5. (a) Except as required under subdivision (c), if, with respect to an offense described in subdivision (e), any person has violated his or her written promise to appear or a lawfully granted continuance of his or her promise to appear in court or before the person authorized to receive a deposit of bail, or violated an order to appear in court, including, but not limited to, a written notice to appear issued in accordance with Section 40518, the magistrate or clerk of the court may give notice of the failure to appear to the department for any violation of this code, any violation that can be heard by a juvenile traffic hearing referee pursuant to Section 256 of the Welfare and Institutions Code, or any violation of any other statute relating to the safe operation of a vehicle, except violations not required to be reported pursuant to paragraphs (1), (2), (3), (6), and (7) of subdivision (b) of Section 1803. If thereafter the case in which the promise was given is adjudicated or the person who has violated the court order appears in court and satisfies the order of the court, the magistrate or clerk of the court hearing the case shall sign and file with the department a certificate to that effect.

(b) If, with respect to an offense described in subdivision (e), willfully failed to pay a lawfully imposed fine within the time authorized by the court or to pay a fine pursuant to subdivision (a) of Section 42003, the magistrate or clerk of the court may give notice of the fact to the department for any violation, except violations not required to be reported pursuant to paragraphs (1), (2), (3), (6), and (7) of subdivision (b) of Section 1803. If thereafter the fine is fully paid, the magistrate or clerk of the court shall issue and file with the department a certificate showing that the fine has been paid.

(c) If any person charged with a violation of Section 23152 or 23153, or Section 191.5 of the Penal Code, or paragraph (3) of subdivision (c) of Section 192 of that code has violated a lawfully granted continuance of his or her promise to appear in court or is released from custody on his or her own recognizance and fails to appear in court or before the person authorized to receive a deposit of bail, or violated an order to appear in court, the magistrate or clerk of the court shall give notice to the department of the failure to appear. If thereafter the case in which the notice was given is adjudicated or the person who has violated the court order appears in court or otherwise satisfies the order of the court, the magistrate

or clerk of the court hearing the case shall prepare and forward to the department a certificate to that effect.

(d) Except as required under subdivision (c), the court shall mail a courtesy warning notice to the defendant by first-class mail at the address shown on the notice to appear, at least 10 days before sending a notice to the department under this section.

(e) If the court notifies the department of a failure to appear or pay a fine pursuant to subdivision (a) or (b), no arrest warrant shall be issued for an alleged violation of subdivision (a) or (b) of Section 40508, unless one of the following criteria is met:

(1) The alleged underlying offense is a misdemeanor or felony.

(2) The alleged underlying offense is a violation of any provision of Division 12 (commencing with Section 24000), Division 13 (commencing with Section 29000), or Division 15 (commencing with Section 35000), required to be reported pursuant to Section 1803.

(3) The driver's record does not show that the defendant has a valid California driver's license.

(4) The driver's record shows an unresolved charge that the defendant is in violation of his or her written promise to appear for one or more other alleged violations of the law.

(f) Except as required under subdivision (c), in addition to the proceedings described in this section, the court may elect to notify the department pursuant to subdivision (c) of Section 40509.

(g) This section is applicable to courts which have elected to provide notice pursuant to subdivision (b). The method of commencing or terminating an election to proceed under this section shall be prescribed by the department.

(h) Any violation subject to Section 40001, which is the responsibility of the owner of the vehicle, shall not be reported under this section.

SEC. 26. Section 40520 is added to the Vehicle Code, to read:

40520. (a) A notice to appear issued pursuant to Section 40518 for an alleged violation recorded by an automatic enforcement system shall contain, or be accompanied by, an affidavit of nonliability and information as to what constitutes nonliability, information as to the effect of executing the affidavit, and instructions for returning the affidavit to the issuing agency.

(b) (1) If a notice to appear is sent to a car rental or leasing company, as the registered owner of the vehicle, the company may return the notice of nonliability pursuant to paragraph (2), if the violation occurred when the vehicle was either leased or rented and operated by a person other than an employee of the rental or leasing company.

(2) If the affidavit of nonliability is returned to the issuing agency by the registered owner within 30 days of the mailing of the notice to appear together with the proof of a written rental agreement or lease between a bona fide renting or leasing company and its customer and that agreement identifies the renter or lessee and

provides the driver's license number, name, and address of the renter or lessee, the agency shall cancel the notice for the registered owner to appear and shall, instead, issue a notice to appear to the renter or lessee identified in the affidavit of nonliability.

(c) Nothing in this section precludes an issuing agency from establishing a procedure whereby registered owners, other than bona fide renting and leasing companies, may execute an affidavit of nonliability if the registered owner identifies the person who was the driver of the vehicle at the time of the alleged violation and whereby the issuing agency issues a notice to appear to that person.

SEC. 27. Section 15.5 of this bill incorporates amendments to Section 12804.9 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 12804.9 of the Vehicle Code, and (3) this bill is enacted after AB 2132, in which case Section 15 of this bill shall not become operative.

SEC. 28. Section 25.5 of this bill incorporates amendments to Section 40509.5 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 40509.5 of the Vehicle Code, and (3) this bill is enacted after AB 2132, in which case Section 25 of this bill shall not become operative.

SEC. 29. 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.

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CHAPTER 829

An act to amend Sections 312, 6715, 16728, 22391, and 22443.1 of the Business and Professions Code, to amend Sections 1789.24, 1812.54, 1812.66, 1812.105, 1812.129, 1812.503, 1812.510, 1812.515, 1812.525, and 1812.600 of the Civil Code, to amend Sections 995.710 and 1279 of the Code of Civil Procedure, to amend Section 318 of the Corporations Code, to amend Sections 12511, 18342, and 19420 of the Education Code, to amend Sections 113, 126, 12302, 12402, 23600, 23713, 25004, 34460, 61230, 65584.3, 68083, and 68116 of the Government Code, to amend Sections 2224, 2226, 4739.5, 6501, 13830, 13876, 32137, 33102, and 34116 of the Health and Safety Code, to amend Sections 9626, 29728, 29731, and 30150 of the Public Resources Code, to amend Sections 7578, 11895, 22258, and 30205 of, and to repeal Sections 7579, 29254, 30944, and 100464 of, the Public Utilities Code, to amend Section 27123 of the Streets and Highways Code, to amend Sections 30321.5, 30322, 30323, 31006, 34501, and 71598 of, and to repeal Section 34503 of, the Water Code, and to amend Sections 10 and 10.2 of Chapter 545 of the Statutes of 1943, relating to the Secretary of State, and making an appropriation therefor.

[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 312 of the Business and Professions Code is amended to read:

312. The director shall submit to the Governor and the Legislature during the month of December prior to each regular session of the Legislature a full and accurate report of the activities of the department relating to consumer affairs and an evaluation of the consumer programs of each state agency. The report shall include recommendations, when appropriate, for legislation that will protect and promote the interests of consumers.

The required evaluation of the consumer programs of each state agency shall include, but is not limited to, comment with respect to the scope, effectiveness, and efficiency of the consumer programs within each agency as well as deficiencies noted in the coordination, administration, or enforcement of the programs.

The director shall include within the report information regarding his or her experience in obtaining and disseminating information with respect to information available from other departments of the state.

SEC. 2. Section 6715 of the Business and Professions Code is amended to read:

6715. The executive officer shall keep a complete record of all applications for registration and the board's action thereon and, once

every two years, shall prepare a roster showing the names and addresses of all registered professional engineers, and the names and addresses of the holders of all delinquent certificates of registration and certificates of authority.

Copies shall be available to the general public. The roster shall be a public record.

SEC. 3. Section 16728 of the Business and Professions Code is amended to read:

16728. (a) Notwithstanding any other provision of law, motor carriers of property, as defined in Section 34601 of the Vehicle Code, may voluntarily elect to participate in uniform cargo liability rules, uniform bills of lading or receipts for property being transported, uniform cargo credit rules, joint line rates or routes, classifications, mileage guides, and pooling. Motor carriers of property that so elect shall comply with all requirements of Section 14501(c) of Title 49 of the United States Code and with federal regulations promulgated pursuant to that section. The Legislature intends by this section to provide to motor carriers of property the antitrust immunity authorized by state action pursuant to Section 14501(c) of Title 49 of the United States Code.

(b) The election authorized by this section shall be exercised in either of the following ways:

(1) Participation in an agreement pursuant to Section 13703 of Title 49 of the United States Code.

(2) Filing with the Department of Motor Vehicles a notice of adoption of any or all of the uniform cargo liability rules, uniform bills of lading or receipts for property being transported, uniform cargo credit rules, joint rates or routes, classifications, mileage guides, and pooling contained in an identified publication authorized by Section 13703 of Title 49 of the United States Code, along with a written certification issued by the organization establishing those uniform rules or provisions in accordance with Section 13703(g)(1)(B) of Title 49 of the United States Code, affirming participation of the motor carrier of property in the collective publication. The certification shall be made available for public inspection.

(c) The elections made by a motor carrier of property pursuant to this section may be canceled by the motor carrier.

SEC. 4. Section 22391 of the Business and Professions Code is amended to read:

22391. (a) When a deposit has been made in lieu of a bond pursuant to Section 995.710 of the Code of Civil Procedure, the person asserting a claim against the deposit shall, in lieu of Section 996.430 of the Code of Civil Procedure, establish the claim by furnishing evidence to the Secretary of State of a money judgment entered by a court together with evidence that the claimant is a person described in Section 22390.

(b) When a person has established the claim with the Secretary of State, the Secretary of State shall review and approve the claim and

enter the date of approval thereon. The claim shall be designated an "approved claim."

(c) When the first claim against a particular deposit account has been approved, it shall not be paid until the expiration of a period of 240 days after the date of its approval by the Secretary of State. Subsequent claims that are approved by the Secretary of State within the same 240-day period shall similarly not be paid until the expiration of the 240-day period. Upon the expiration of the 240-day period, the Secretary of State shall pay all approved claims from that 240-day period in full unless the deposit is insufficient, in which case each approved claim shall be paid a pro rata share of the deposit.

(d) When the Secretary of State approves the first claim against a particular deposit account after the expiration of a 240-day period, the date of approval of that claim shall begin a new 240-day period to which subdivision (c) shall apply with respect to the amount remaining in the deposit account.

(e) After a deposit account is exhausted, no further claims shall be paid by the Secretary of State. Claimants who have had their claims paid in full or in part pursuant to subdivisions (c) and (d) shall not be required to return funds received from the deposit for the benefit of other claimants.

(f) When a deposit has been made in lieu of a bond, the amount of the deposit shall not be subject to attachment, garnishment, or execution with respect to an action or judgment against the invention developer, other than as to an amount no longer needed or required for the purpose of this chapter which would otherwise be returned to the invention developer by the Secretary of State.

(g) The Secretary of State shall retain a cash deposit for two years from the date the Secretary of State receives written notification from the assignor of the deposit that the assignor has ceased to engage in the business of an invention developer or has filed a bond pursuant to Section 22389, provided that there are no outstanding claims against the deposit. The written notice shall include all of the following: (1) name, address, and telephone number of the assignor; (2) name, address, and telephone number of the bank at which the deposit is located; (3) account number of the deposit; and (4) a statement whether the assignor is ceasing to engage in the business of an invention developer or has filed a bond with the Secretary of State. The Secretary of State shall forward an acknowledgment of receipt of the written notification to the assignor at the address indicated therein, specifying the date of receipt of the written notice and anticipated date of release of the deposit.

(h) This section shall apply to all deposits retained by the Secretary of State.

(i) A judge of a municipal or superior court may order the return of the deposit prior to the expiration of two years upon evidence satisfactory to the judge that there are no outstanding claims against the deposit or order the Secretary of State to retain the deposit for

a sufficient period beyond the two years specified in subdivision (g) to resolve outstanding claims against the deposit.

SEC. 5. Section 22443.1 of the Business and Professions Code is amended to read:

22443.1. (a) Prior to engaging in the business or acting in the capacity of an immigration consultant on or after January 1, 1998, each person shall file with the Secretary of State a bond of twenty-five thousand dollars ($25,000) executed by a corporate surety admitted to do business in this state and conditioned upon compliance with this chapter. The total aggregate liability on the bond shall be limited to twenty-five thousand dollars ($25,000). The bond may be terminated pursuant to Section 995.440 of, and Article 13 (commencing with Section 996.310) of Chapter 2 of Title 14 of Part 2 of, the Code of Civil Procedure.

(b) The bond required by this section shall be in favor of, and payable to, the people of the State of California and shall be for the benefit of any person damaged by any fraud, misstatement, misrepresentation, unlawful act or omission, or failure to provide the services of the immigration consultant or the agents, representatives, or employees of the immigration consultant while acting within the scope of that employment or agency.

(c) The Secretary of State shall charge and collect a filing fee to cover the cost of filing the bond or the deposit filed in lieu of a bond as set forth in Section 995.710 of the Code of Civil Procedure.

(d) The Secretary of State shall enforce the provisions of this chapter that govern the filing and maintenance of bonds and deposits in lieu of bonds.

(e) A deposit may be made in lieu of a bond as set forth in Section 995.710 of the Code of Civil Procedure. When a deposit is made in lieu of the bond, the person asserting the claim against the deposit shall establish the claim by furnishing evidence to the Secretary of State of a money judgment entered by a court together with evidence that the claimant is a person described in subdivision (b).

(f) When a claimant has established the claim with the Secretary of State, the Secretary of State shall review and approve the claim and enter the date of approval thereon. The claim shall be designated an "approved claim."

(g) When the first claim against a particular deposit has been approved, it shall not be paid until the expiration of a period of 240 days after the date of its approval by the Secretary of State. Subsequent claims that are approved by the Secretary of State within the same 240-day period shall similarly not be paid until the expiration of the 240-day period. Upon the expiration of the 240-day period, the Secretary of State shall pay all approved claims from that 240-day period in full unless the deposit is insufficient, in which case each approved claim shall be paid a pro rata share of the deposit.

(h) When the Secretary of State approves the first claim against a particular deposit after the expiration of a 240-day period, the date

of approval of that claim shall begin a new 240-day period to which subdivision (g) shall apply with respect to any amount remaining in the deposit.

(i) After a deposit is exhausted, no further claims shall be paid by the Secretary of State. Claimants who have had claims paid in full or in part pursuant to subdivision (g) or (h) shall not be required to return funds received from the deposit for the benefit of other claimants.

(j) When a deposit has been made in lieu of a bond, the amount of the deposit shall not be subject to attachment, garnishment, or execution with respect to an action or judgment against the assignor of the deposit, other than as to an amount as no longer needed or required for the purpose of this title which would otherwise be returned to the assignor of the deposit by the Secretary of State.

(k) The Secretary of State shall retain a cash deposit for two years from the date the Secretary of State receives written notification from the assignor of the deposit that the assignor has ceased to engage in the business or act in the capacity of an immigration consultant or has filed a bond pursuant to subdivision (a), provided that there are no outstanding claims against the deposit. The written notice shall include all of the following: (1) name, address, and telephone number of the assignor; (2) name, address, and telephone number of the bank at which the deposit is located; (3) account number of the deposit; and (4) a statement whether the assignor is ceasing to engage in the business or act in the capacity of an immigration consultant or has filed a bond with the Secretary of State. The Secretary of State shall forward an acknowledgment of receipt of the written notice to the assignor at the address indicated therein, specifying the date of receipt of the written notice and anticipated date of release of the deposit, provided there are no outstanding claims against the deposit.

(*l*) A judge of a municipal or superior court may order the return of the deposit prior to the expiration of two years upon evidence satisfactory to the judge that there are no outstanding claims against the deposit or order the Secretary of State to retain the deposit for a specified period beyond the two years pursuant to subdivision (k) to resolve outstanding claims against the deposit.

(m) This section does not apply to employees of nonprofit, tax-exempt corporations who help clients complete application forms in immigration matters, either free of charge or for a fee. Any fees charged may include reasonable costs and shall be consistent with fees authorized by the United States Immigration and Naturalization Service for qualified designated entities.

(n) 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. 6. Section 1789.24 of the Civil Code is amended to read:

1789.24. (a) When a deposit has been made in lieu of a bond pursuant to Section 995.710 of the Code of Civil Procedure, the person asserting a claim against the deposit shall, in lieu of proceeding under Section 996.430 of the Code of Civil Procedure, establish the claim by furnishing evidence to the Secretary of State of a money judgment entered by a court, together with evidence that the claimant is a person described in subdivision (b) of Section 1789.18.

(b) When a person has established the claim with the Secretary of State, the Secretary of State shall review and approve the claim and enter the date of approval thereon. The claim shall be designated an "approved claim."

(c) When the first claim against a particular deposit has been approved, it shall not be paid until the expiration of a period of 240 days after the date of its approval by the Secretary of State. Subsequent claims that are approved by the Secretary of State within the same 240-day period shall similarly not be paid until the expiration of the 240-day period. Upon the expiration of the 240-day period, the Secretary of State shall pay all approved claims from that 240-day period in full unless the deposit is insufficient, in which case each approved claim shall be paid a pro rata share of the deposit.

(d) When the Secretary of State approves the first claim against a particular deposit after the expiration of a 240-day period, the date of approval of that claim shall begin a new 240-day period to which subdivision (c) shall apply with respect to any amount remaining in the deposit.

(e) After a deposit is exhausted, no further claims shall be paid by the Secretary of State. Claimants who have had their claims paid in full or in part pursuant to subdivision (c) or (d) shall not be required to return funds received from the deposit for the benefit of other claimants.

(f) When a deposit has been made in lieu of a bond, as specified in subdivision (a), the amount of the deposit shall not be subject to attachment, garnishment, or execution with respect to an action or judgment against the credit services organization, other than as to an amount as no longer needed or required for the purpose of this title which would otherwise be returned to the credit services organization by the Secretary of State.

(g) The Secretary of State shall retain a cash deposit for two years from the date the Secretary of State receives written notification from the assignor of the deposit that the assignor has ceased to engage in the business of a credit services organization or has filed a bond pursuant to Section 1789.18, provided that there are no outstanding claims against the deposit. The written notice shall include all of the following: (1) name, address, and telephone number of the assignor; (2) name, address, and telephone number of the bank at which the deposit is located; (3) account number of the deposit; and (4) a statement whether the assignor is ceasing to engage in the business

of a credit services organization or has filed a bond with the Secretary of State. The Secretary of State shall forward an acknowledgment of receipt of the written notice to the assignor at the address indicated therein, specifying the date of receipt of the written notice and anticipated date of release of the deposit.

(h) This section shall apply to all deposits retained by the Secretary of State.

(i) A judge of a municipal or superior court may order the return of the deposit prior to the expiration of two years upon evidence satisfactory to the judge that there are no outstanding claims against the deposit or order the Secretary of State to retain the deposit for a sufficient period beyond the two years specified in subdivision (g) to resolve outstanding claims against the deposit account.

SEC. 7. Section 1812.54 of the Civil Code is amended to read:

1812.54. (a) Every contract for dance studio lessons and other services shall provide that performance of the agreed-upon lessons will begin within 12 months from the date the contract is entered into.

(b) Every contract for dance studio lessons and other services shall further provide all of the following:

(1) That the contract may be canceled within 180 days after the date of receipt by the customer of a copy of the contract by written notice to the other party at the address specified in the contract, and all moneys paid pursuant to the contract shall be refunded within 10 days of receipt of the notice of cancellation, except that payment shall be made for any dance studio lessons and other services received prior to the cancellation.

(2) That the contract may be canceled after 180 days after the date of receipt by the customer of a copy of the contract by written notice to the other party at the address specified in the contract, and the student canceling the contract shall be thereafter entitled to a refund, within 10 days of receipt by the dance studio of notice of cancellation, of all moneys paid pursuant to the canceled contract with the exception that the dance studio shall be entitled to 10 percent of the unpaid balance pursuant to the terms of the canceled contract, and except further that, in addition to the foregoing, payment shall be made for any dance studio lessons and other services received prior to the cancellation.

(c) Every contract for dance studio lessons and other services shall contain a written statement of the hourly rate charged for each type of lesson for which the student has contracted. If the contract includes dance studio lessons that are sold at different per-hour rates, the contract shall contain separate hourly rates for each different type of lesson sold. All other services for which the student has contracted that are not capable of a per-hour charge shall be set forth in writing in specific terms. The statement shall be contained in the dance studio contract before the contract is signed by the buyer.

(d) Every dance studio subject to Sections 1812.64 to 1812.66, inclusive, shall include in every contract for dance studio lessons or other services a statement that the studio is bonded and that information concerning the bond may be obtained by writing to the office of the Secretary of State. If the studio has elected to make a cash deposit in lieu of procuring a bond, the contract shall contain a description of the cash deposit.

SEC. 8. Section 1812.66 of the Civil Code is amended to read:

1812.66. (a) When a deposit has been made in lieu of a bond pursuant to Section 995.710 of the Code of Civil Procedure, the person asserting a claim against the deposit shall, in lieu of Section 996.430 of the Code of Civil Procedure, establish the claim by furnishing evidence to the Secretary of State of a money judgment entered by a court together with evidence that the claimant is a person described in Section 1812.65.

(b) When a person has established the claim with the Secretary of State, the Secretary of State shall review and approve the claim and enter the date of approval thereon. The claim shall be designated an "approved claim."

(c) When the first claim against a particular deposit has been approved, it shall not be paid until the expiration of a period of 240 days after the date of its approval by the Secretary of State. Subsequent claims that are approved by the Secretary of State within the same 240-day period shall similarly not be paid until the expiration of the 240-day period. Upon the expiration of the 240-day period, the Secretary of State shall pay all approved claims from that 240-day period in full unless there are insufficient funds in the deposit, in which case each approved claim shall be paid a pro rata share of the deposit.

(d) When the Secretary of State approves the first claim against a particular deposit account after the expiration of a 240-day period, the date of approval of that claim shall begin a new 240-day period to which subdivision (c) shall apply with respect to the amount remaining in the deposit account.

(e) After a deposit is exhausted, no further claims shall be paid by the Secretary of State. Claimants who have had their claims paid in full or in part pursuant to subdivisions (c) and (d) shall not be required to return funds received from the deposit for the benefit of other claimants.

(f) When a deposit has been made in lieu of a bond, the amount of the deposit shall not be subject to attachment, garnishment, or execution with respect to an action or judgment against the dance studio, other than as to an amount no longer needed or required for the purpose of this title that would otherwise be returned to the dance studio by the Secretary of State.

(g) The Secretary of State shall retain a cash deposit for two years from the date the Secretary of State receives written notification from the assignor of the deposit that the assignor has ceased to engage

in the business of a dance studio or has filed a bond pursuant to Section 1812.64, provided that there are no outstanding claims against the deposit. The written notice shall include all of the following: (1) name, address, and telephone number of the assignor; (2) name, address, and telephone number of the bank at which the deposit is located; (3) account number of the deposit; and (4) a statement whether the assignor is ceasing to engage in the business of a dance studio or has filed a bond with the Secretary of State. The Secretary of State shall forward an acknowledgment of receipt of the written notice to the assignor at the address indicated therein, specifying the date of receipt of the written notice and anticipated date of release of the deposit, provided there are no outstanding claims against the deposit.

(h) A judge of a municipal or superior court may order the return of the deposit prior to the expiration of two years upon evidence satisfactory to the judge that there are no outstanding claims against the deposit or order the Secretary of State to retain the deposit for a sufficient period beyond the two years specified in subdivision (g) to resolve outstanding claims against the deposit account.

SEC. 9. Section 1812.105 of the Civil Code is amended to read:

1812.105. (a) When a deposit has been made in lieu of a bond pursuant to Section 995.710 of the Code of Civil Procedure, the person asserting a claim against the deposit shall, in lieu of Section 996.430 of the Code of Civil Procedure, establish the claim by furnishing evidence to the Secretary of State of a money judgment entered by a court together with evidence that the claimant is a person described in Section 1812.104.

(b) When a person has established the claim with the Secretary of State, the Secretary of State shall review and approve the claim and enter the date of approval on the claim. The claim shall be designated an "approved claim."

(c) When the first claim against a particular deposit has been approved, it shall not be paid until the expiration of a period of 240 days after the date of its approval by the Secretary of State. Subsequent claims that are approved by the Secretary of State within the same 240-day period shall similarly not be paid until the expiration of the 240-day period. Upon the expiration of the 240-day period, the Secretary of State shall pay all approved claims from that 240-day period in full unless the deposit is insufficient, in which case each approved claim shall be paid a pro rata share of the deposit.

(d) When the Secretary of State approves the first claim against a particular deposit after the expiration of a 240-day period, the date of approval of that claim shall begin a new 240-day period to which subdivision (c) shall apply with respect to the amount remaining in the deposit.

(e) After a deposit is exhausted, no further claims shall be paid by the Secretary of State. Claimants who have had their claims paid in full or in part pursuant to subdivisions (c) and (d) shall not be

required to return funds received from the deposit for the benefit of other claimants.

(f) When a deposit has been made in lieu of a bond, the amount of the deposit shall not be subject to attachment, garnishment, or execution with respect to an action or judgment against the discount buying organization, other than as to an amount as no longer needed or required for the purpose of this title that would otherwise be returned to the discount buying organization by the Secretary of State.

(g) The Secretary of State shall retain a cash deposit for two years from the date the Secretary of State receives written notification from the assignor of the deposit that the assignor has ceased to engage in the business of a discount buying organization or has filed a bond pursuant to Section 1812.103, provided that there are no outstanding claims against the deposit. This written notice shall include all of the following: (1) name, address, and telephone number of the assignor; (2) name, address, and telephone number of the bank at which the deposit is located; (3) account number of the deposit; and (4) a statement whether the assignor is ceasing to engage in the business of a discount buying organization or has filed a bond with the Secretary of State. The Secretary of State shall forward an acknowledgment of receipt of the written notice to the assignor at the address indicated therein, specifying the date of receipt of the written notice and anticipated date of release of the deposit, provided there are no outstanding claims against the deposit.

(h) A judge of a municipal or superior court may order the return of the deposit prior to the expiration of two years upon evidence satisfactory to the judge that there are no outstanding claims against the deposit or order the Secretary of State to retain the deposit for a sufficient period beyond the two years specified in subdivision (g) to resolve outstanding claims against the deposit.

SEC. 10. Section 1812.129 of the Civil Code is amended to read:

1812.129. (a) The Secretary of State shall enforce the provisions of this title that govern the filing and maintenance of bonds and deposits in lieu of bonds.

(b) The Secretary of State shall charge a filing fee not to exceed the cost of filing the bond or the deposit in lieu of a bond pursuant to Section 995.710 of the Code of Civil Procedure.

SEC. 11. Section 1812.503 of the Civil Code is amended to read:

1812.503. (a) Every employment agency subject to this title shall maintain a bond issued by a surety company admitted to do business in this state. The principal sum of the bond shall be three thousand dollars ($3,000). A copy of the bond shall be filed with the Secretary of State.

(b) The bond required by this section shall be in favor of, and payable to, the people of the State of California and shall be conditioned that the person obtaining the bond will comply with this title and will pay all sums due any individual or group of individuals

when the person or his or her representative, agent, or employee has received those sums. The bond shall be for the benefit of any person or persons damaged by any violation of this title or by fraud, dishonesty, misstatement, misrepresentation, deceit, unlawful acts or omissions, or failure to provide the services of the employment agency in performance of the contract with the jobseeker, by the employment agency or its agents, representatives, or employees while acting within the scope of their employment.

(c) (1) No employment agency shall conduct any business without having a current surety bond in the amount prescribed by this title and filing a copy of the bond with the Secretary of State.

(2) Thirty days prior to the cancellation or termination of any surety bond required by this section, the surety shall send a written notice of that cancellation or termination to both the employment agency and the Secretary of State, identifying the bond and the date of cancellation or termination.

(3) If any employment agency fails to obtain a new bond and file a copy of that bond with the Secretary of State by the effective date of the cancellation or termination of the former bond, the employment agency shall cease to conduct any business unless and until a new surety bond is obtained and a copy of that bond is filed with the Secretary of State.

(d) When a deposit has been made in lieu of the bond pursuant to Section 995.710 of the Code of Civil Procedure, the person asserting a claim against the deposit shall, in lieu of Section 996.430 of the Code of Civil Procedure, establish the claim by furnishing evidence to the Secretary of State of a money judgment entered by a court together with evidence that the claimant is a person described in subdivision (b).

(e) When a claimant has established the claim with the Secretary of State, the Secretary of State shall review and approve the claim and enter the date of approval thereon. The claim shall be designated an "approved claim."

(f) When the first claim against a particular deposit has been approved, it shall not be paid until the expiration of a period of 240 days after the date of its approval by the Secretary of State. Subsequent claims that are approved by the Secretary of State within the same 240-day period shall similarly not be paid until the expiration of the 240-day period. Upon the expiration of the 240-day period, the Secretary of State shall pay all approved claims from that 240-day period in full unless the deposit is insufficient, in which case each approved claim shall be paid a pro rata share of the deposit.

(g) When the Secretary of State approves the first claim against a particular deposit after the expiration of a 240-day period, the date of approval of that claim shall begin a new 240-day period to which subdivision (f) shall apply with respect to any amount remaining in the deposit.

(h) After a deposit is exhausted, no further claims shall be paid by the Secretary of State. Claimants who have had their claims paid in full or in part pursuant to subdivision (f) or (g) shall not be required to return funds received from the deposit for the benefit of other claimants.

(i) When a deposit has been made in lieu of a bond, the amount of the deposit shall not be subject to attachment, garnishment, or execution with respect to an action or judgment against the employment agency, other than as to an amount as no longer needed or required for the purpose of this title that would otherwise be returned to the employment agency by the Secretary of State.

(j) The Secretary of State shall retain a cash deposit for two years from the date the Secretary of State receives written notification from the assignor of the deposit that the assignor has ceased to engage in the business of an employment agency or has filed a bond pursuant to subdivision (a), provided that there are no outstanding claims against the deposit. This written notice shall include all of the following: (1) name, address, and telephone number of the assignor; (2) name, address, and telephone number of the bank at which the deposit is located; (3) account number of the deposit; and (4) a statement whether the assignor is ceasing to engage in the business of an employment agency or has filed a bond with the Secretary of State. The Secretary of State shall forward an acknowledgment of receipt of the written notice to the assignor at the address indicated therein, specifying the date of receipt of the written notice and anticipated date of release of the deposit, provided there are no outstanding claims against the deposit.

(k) A judge of a municipal or superior court may order the return of the deposit prior to the expiration of two years upon evidence satisfactory to the judge that there are no outstanding claims against the deposit or order the Secretary of State to retain the deposit for a sufficient period beyond the two years pursuant to subdivision (j) to resolve outstanding claims against the deposit account.

(*l*) The Secretary of State shall charge a filing fee not to exceed the cost of filing the bond or deposit filed in lieu of a bond as set forth in Section 995.710 of the Code of Civil Procedure.

(m) The Secretary of State shall enforce the provisions of this chapter that govern the filing and maintenance of bonds and deposits in lieu of bonds.

SEC. 12. Section 1812.510 of the Civil Code is amended to read:

1812.510. (a) Every employment counseling service subject to this title shall maintain a bond issued by a surety company admitted to do business in this state. The principal sum of the bond shall be ten thousand dollars ($10,000). A copy of the bond shall be filed with the Secretary of State.

(b) The bond required by this section shall be in favor of, and payable to, the people of the State of California, and shall be conditioned that the person obtaining the bond will comply with this

title and will pay all sums due any individual or group of individuals when the person or his or her representative, agent, or employee has received those sums. The bond shall be for the benefit of any person or persons damaged by any violation of this title or by fraud, dishonesty, misstatement, misrepresentation, deceit, unlawful acts of omissions, or failure to provide the services of the employment counseling service in performance of the contract with the customer by the employment counseling service or its agents, representatives, or employees while acting within the scope of their employment.

(c) (1) No employment counseling service shall conduct any business without having a current surety bond in the amount prescribed by this title and filing a copy of the bond with the Secretary of State.

(2) Thirty days prior to the cancellation or termination of any surety bond required by this section, the surety shall send a written notice of that cancellation or termination to both the employment counseling service and the Secretary of State, identifying the bond and the date of cancellation or termination.

(3) If any employment counseling service fails to obtain a new bond and file a copy of that bond with the Secretary of State by the effective date of the cancellation or termination of the former bond, the employment counseling service shall cease to conduct any business unless and until a new surety bond is obtained and a copy of that bond is filed with the Secretary of State.

(d) When a deposit has been made in lieu of the bond pursuant to Section 995.710 of the Code of Civil Procedure, the person asserting a claim against the deposit shall, in lieu of Section 996.430 of the Code of Civil Procedure, establish the claim by furnishing evidence to the Secretary of State of a money judgment entered by a court together with evidence that the claimant is a person described in subdivision (b).

(e) When a person has established the claim with the Secretary of State, the Secretary of State shall immediately review and approve the claim and enter the date of approval on the claim. The claim shall be designated an "approved claim."

(f) When the first claim against a particular deposit has been approved, it shall not be paid until the expiration of a period of 240 days after the date of its approval by the Secretary of State. Subsequent claims that are approved by the Secretary of State within the same 240-day period shall similarly not be paid until the expiration of the 240-day period. Upon the expiration of the 240-day period, the Secretary of State shall pay all approved claims from that 240-day period in full unless the deposit is insufficient, in which case each approved claim shall be paid a pro rata share of the deposit.

(g) When the Secretary of State approves the first claim against a particular deposit account after the expiration of the 240-day period, the date of approval of that claim shall begin a new 240-day

period to which subdivision (f) shall apply with respect to the amount remaining in the deposit account.

(h) After a deposit account is exhausted, no further claims shall be paid by the Secretary of State. Claimants who have had their claims paid in full or in part pursuant to subdivisions (f) and (g) shall not be required to return funds received from the deposit for the benefit of other claimants.

(i) When a deposit has been made in lieu of a bond, the amount of the deposit shall not be subject to attachment, garnishment, or execution with respect to an action or judgment against the employment counseling service, other than as to an amount as no longer needed or required for the purpose of this title that would otherwise be returned to the employment counseling service by the Secretary of State.

(j) The Secretary of State shall retain a cash deposit for two years from the date the Secretary of State receives written notification from the assignor of the deposit that the assignor has ceased to engage in the business of a counseling service or has filed a bond pursuant to subdivision (a), provided that there are no outstanding claims against the deposit. Written notification to the Secretary of State shall include all of the following: (1) name, address, and telephone number of the assignor; (2) name, address, and telephone number of the bank at which the deposit is located; (3) account number of the deposit; and (4) a statement whether the assignor is ceasing to engage in the business of a counseling service or has filed a bond with the Secretary of State. The Secretary of State shall forward an acknowledgment of receipt of the written notice to the assignor at the address indicated in the notice, specifying the date of receipt of the written notice and anticipated date of release of the deposit, provided there are no outstanding claims against the deposit account.

(k) A judge of a municipal or superior court may order the return of the deposit prior to the expiration of two years upon evidence satisfactory to the judge that there are no outstanding claims against the deposit or order the Secretary of State to retain the deposit for a sufficient period beyond the two years pursuant to subdivision (j) to resolve outstanding claims against the deposit account.

(*l*) The Secretary of State shall charge a filing fee not to exceed the cost of filing the bond or the deposit filed in lieu of a bond pursuant to Section 995.710 of the Code of Civil Procedure.

(m) The Secretary of State shall enforce the provisions of this chapter that govern the filing and maintenance of bonds and deposits in lieu of bonds.

SEC. 13. Section 1812.515 of the Civil Code is amended to read:

1812.515. (a) Every job listing service subject to this title shall maintain a bond issued by a surety company admitted to do business in this state. The principal sum of the bond shall be ten thousand dollars ($10,000) for each location. A copy of the bond shall be filed with the Secretary of State.

(b) The bond required by this section shall be in favor of, and payable to, the people of the State of California, and shall be conditioned that the person obtaining the bond will comply with this title and will pay all sums due any individual or group of individuals when the person or his or her representative, agent, or employee has received those sums. The bond shall be for the benefit of any person or persons damaged by any violation of misrepresentation, deceit, unlawful acts of omissions, or failure to provide the services of the job listing service in performance of the contract with the jobseeker, by the job listing service or its agent, representatives, or employees while acting within the scope of their employment.

(c) (1) No job listing service shall conduct any business without having a current surety bond in the amount prescribed by this chapter and filing a copy of the bond with the Secretary of State, identifying the bond and the date of cancellation or termination.

(2) Thirty days prior to the cancellation or termination of any surety bond required by this section, the surety shall send a written notice of that cancellation or termination to both the job listing service and the Secretary of State, identifying the bond and the date of cancellation or termination.

(3) If any job listing service fails to obtain a new bond and file a copy of that bond with the Secretary of State by the effective date of the cancellation or termination of the former bond, the job listing service shall cease to conduct any business unless and until a new surety bond is obtained and a copy of that bond is filed with the Secretary of State.

(d) When a deposit has been made in lieu of a bond pursuant to Section 995.710 of the Code of Civil Procedure, the person asserting a claim against the deposit shall, in lieu of Section 996.430 of the Code of Civil Procedure, establish the claim by furnishing evidence to the Secretary of State of a money judgment entered by a court together with evidence that the claimant is a person described in subdivision (b).

(e) When a person has established the claim with the Secretary of State, the Secretary of State shall review and approve the claim and enter the date of approval on the claim. The claim shall be designated an "approved claim."

(f) When the first claim against a particular deposit has been approved, it shall not be paid until the expiration of a period of 240 days after the date of its approval by the Secretary of State. Subsequent claims that are approved by the Secretary of State within the same 240-day period shall similarly not be paid until the expiration of the 240-day period. Upon the expiration of the 240-day period, the Secretary of State shall pay all approved claims from that 240-day period in full unless the deposit is insufficient, in which case each approved claim shall be paid in a pro rata share of the deposit.

(g) When the Secretary of State approves the first claim against a particular deposit after the expiration of the 240-day period, the

date of approval of that claim shall begin a new 240-day period to which subdivision (f) shall apply with respect to the amount remaining in the deposit.

(h) After a deposit is exhausted, no further claims shall be paid by the Secretary of State. Claimants who have had their claims paid in full or in part pursuant to subdivisions (f) and (g) shall not be required to return funds received from the deposit for the benefit of other claimants.

(i) When a deposit has been made in lieu of a bond, the amount of the deposit shall not be subject to attachment, garnishment, or execution with respect to an action or judgment against the job listing service, other than as to an amount as no longer needed or required for the purpose of this title that would otherwise be returned to the job listing service by the Secretary of State.

(j) The Secretary of State shall retain a cash deposit for two years from the date the Secretary of State receives written notification from the assignor of the deposit that the assignor has ceased to engage in the business of a job listing service or has filed a bond pursuant to subdivision (a), provided that there are no outstanding claims against the deposit. Written notification to the Secretary of State shall include all of the following: (1) name, address, and telephone number of the assignor; (2) name, address, and telephone number of the bank at which the deposit is located; (3) account number of the deposit; and (4) a statement whether the assignor is ceasing to engage in the business of a job listing service or has filed a bond with the Secretary of State. The Secretary of State shall forward an acknowledgment of receipt of the written notice to the assignor at the address indicated therein, specifying the date of receipt of the written notice and anticipated date of release of the deposit, provided there are no outstanding claims against the deposit.

(k) A judge of a municipal or superior court may order the return of the deposit prior to the expiration of two years upon evidence satisfactory to the judge that there are no outstanding claims against the deposit or order the Secretary of State to retain the deposit for a specified period beyond the two years pursuant to subdivision (j) to resolve outstanding claims against the deposit account.

(*l*) The Secretary of State shall charge a filing fee not to exceed the cost of filing the bond or deposit filed in lieu of a bond pursuant to Section 995.710 of the Code of Civil Procedure.

(m) The Secretary of State shall enforce the provisions of this chapter that govern the filing and maintenance of bonds and deposits in lieu of bonds.

SEC. 14. Section 1812.525 of the Civil Code is amended to read:

1812.525. (a) Every nurses' registry subject to this title shall maintain a bond issued by a surety company admitted to do business in this state. The principal sum of the bond shall be three thousand dollars ($3,000). A copy of the bond shall be filed with the Secretary of State.

(b) The bond required by this section shall be in favor of, and payable to, the people of the State of California, and shall be conditioned that the person obtaining the bond will comply with this title and will pay all sums due any individual or group of individuals when the person or his or her representative, agent, or employee has received those sums. The bond shall be for the benefit of any person or persons damaged by any violation of this title or by fraud, dishonesty, misstatement, misrepresentation, deceit, unlawful acts or omissions, or failure to provide the services of the nurses' registry in performance of the contract with the nurse by the nurses' registry or its agents, representatives, or employees while acting within the scope of their employment.

(c) (1) No nurses' registry shall conduct any business without having a current surety bond in the amount prescribed by this title and filing a copy of the bond with the Secretary of State.

(2) Thirty days prior to the cancellation or termination of any surety bond required by this section, the surety shall send a written notice of that cancellation or termination to both the nurses' registry and the Secretary of State, identifying the bond and the date of cancellation or termination.

(3) If any nurses' registry fails to obtain a new bond and file a copy of that bond with the Secretary of State by the effective date of the cancellation or termination of the former bond, the nurses' registry shall cease to conduct any business unless and until a new surety bond is obtained and a copy of that bond is filed with the Secretary of State.

(d) When a deposit has been made in lieu of a bond pursuant to Section 995.710 of the Code of Civil Procedure, the person asserting a claim against the deposit shall, in lieu of Section 996.430 of the Code of Civil Procedure, establish the claim by furnishing evidence to the Secretary of State of a money judgment entered by a court together with evidence that the claimant is a person described in subdivision (b).

(e) When a person has established the claim with the Secretary of State, the Secretary of State shall review and approve the claim and enter the date of approval on the claim. The claim shall be designated an "approved claim."

(f) When the first claim against a particular deposit has been approved, it shall not be paid until the expiration of a period of 240 days after the date of its approval by the Secretary of State. Subsequent claims that are approved by the Secretary of State within the same 240-day period shall similarly not be paid until the expiration of the 240-day period. Upon the expiration of the 240-day period, the Secretary of State shall pay all approved claims from that 240-day period in full unless the deposit is insufficient, in which case each approved claim shall be paid a pro rata share of the deposit.

(g) When the Secretary of State approves the first claim against a particular deposit after the expiration of a 240-day period, the date of approval of that claim shall begin a new 240-day period to which

subdivision (f) shall apply with respect to the amount remaining in the deposit.

(h) After a deposit is exhausted, no further claims shall be paid by the Secretary of State. Claimants who have had their claims paid in full or in part pursuant to subdivisions (f) and (g) shall not be required to return funds received from the deposit for the benefit of other claimants.

(i) When a deposit has been made in lieu of a bond, the amount of the deposit shall not be subject to attachment, garnishment, or execution with respect to an action or judgment against the nurses' registry, other than as to an amount as no longer needed or required for the purpose of this title that would otherwise be returned to the nurses' registry by the Secretary of State.

(j) The Secretary of State shall retain a cash deposit for two years from the date the Secretary of State receives written notification from the assignor of the deposit that the assignor has ceased to engage in the business of a nurse's registry or has filed a bond pursuant to subdivision (a), provided that there are no outstanding claims against the deposit. The written notice to the Secretary of State shall include all of the following: (1) name, address, and telephone number of the assignor; (2) name, address, and telephone number of the bank at which the deposit is located; (3) account number of the deposit; and (4) a statement whether the assignor is ceasing to engage in the business of a nurse's registry or has filed a bond with the Secretary of State. The Secretary of State shall forward an acknowledgment of receipt of the written notice to the assignor at the address indicated therein, specifying the date of receipt of the written notice and anticipated date of release of the deposit, provided there are no outstanding claims against the deposit.

(k) A judge of a municipal or superior court may order the return of the deposit prior to the expiration of two years upon evidence satisfactory to the judge that there are no outstanding claims against the deposit or order the Secretary of State to retain the deposit for a specified period beyond the two years pursuant to subdivision (j) to resolve outstanding claims against the deposit.

(*l*) The Secretary of State shall charge a filing fee not to exceed the cost of filing the bond or deposit filed in lieu of a bond pursuant to Section 995.710 of the Code of Civil Procedure.

(m) The Secretary of State shall enforce the provisions of this chapter that govern the filing and maintenance of bonds and deposits in lieu of bonds.

SEC. 15. Section 1812.600 of the Civil Code is amended to read:

1812.600. (a) Every auctioneer and auction company shall maintain a bond issued by a surety company admitted to do business in this state. The principal sum of the bond shall be twenty thousand dollars ($20,000). A copy of the bond shall be filed with the Secretary of State.

(b) The bond required by this section shall be in favor of, and payable to, the people of the State of California and shall be for the benefit of any person or persons damaged by any fraud, dishonesty, misstatement, misrepresentation, deceit, unlawful acts or omissions, or failure to provide the services of the auctioneer or auction company in performance of the auction by the auctioneer or auction company or its agents, representatives, or employees while acting within the scope of their employment.

(c) (1) No auctioneer or auction company shall conduct any business without having a current surety bond in the amount prescribed by this section and without filing a copy of the bond with the Secretary of State.

(2) Thirty days prior to the cancellation or termination of any surety bond required by this section, the surety shall send a written notice of that cancellation or termination to both the auctioneer or auction company and the Secretary of State, identifying the bond and the date of cancellation or termination.

(3) If any auctioneer or auction company fails to obtain a new bond and file a copy of that bond with the Secretary of State by the effective date of the cancellation or termination of the former bond, the auctioneer or auction company shall cease to conduct any business unless and until that time as a new surety bond is obtained and a copy of that bond is filed with the Secretary of State.

(d) A deposit may be made in lieu of a bond as set forth in Section 995.710 of the Code of Civil Procedure. When a deposit is made in lieu of the bond, the person asserting the claim against the deposit shall establish the claim by furnishing evidence to the Secretary of State of a money judgment entered by a court together with evidence that the claimant is a person described in subdivision (b).

(e) When a claimant has established the claim with the Secretary of State, the Secretary of State shall review and approve the claim and enter the date of approval on the claim. The claim shall be designated an "approved claim."

(f) When the first claim against a particular deposit has been approved, it shall not be paid until the expiration of a period of 240 days after the date of its approval by the Secretary of State. Subsequent claims that are approved by the Secretary of State within the same 240-day period shall similarly not be paid until the expiration of the 240-day period. Upon expiration of the 240-day period, the Secretary of State shall pay all approved claims from that 240-day period in full unless the deposit is insufficient, in which case each approved claim shall be paid a pro rata share of the deposit.

(g) When the Secretary of State approves the first claim against a particular deposit after the expiration of a 240-day period, the date of approval of that claim shall begin a new 240-day period to which subdivision (f) shall apply with respect to any amount remaining in the deposit.

(h) After a deposit is exhausted, no further claims shall be paid by the Secretary of State. Claimants who have had their claims paid in full or in part pursuant to subdivision (f) or (g) shall not be required to return funds received from the deposit for the benefit of other claimants.

(i) When a deposit has been made in lieu of a bond, the amount of the deposit shall not be subject to attachment, garnishment, or execution with respect to an action or judgment against the auctioneer or auction company, other than as to that amount that is no longer needed or required for the purpose of this section that otherwise would be returned to the auctioneer or auction company by the Secretary of State.

(j) The Secretary of State shall retain a cash deposit for two years from the date the Secretary of State receives written notification from the assignor of the deposit that the assignor has ceased to engage in the business of an auctioneer or auction company or has filed a bond pursuant to subdivision (a), provided that there are no outstanding claims against the deposit. Written notification to the Secretary of State shall include all of the following: (1) name, address, and telephone number of the assignor; (2) name, address, and telephone number of the bank at which the deposit is located; (3) account number of the deposit; and (4) a statement whether the assignor is ceasing to engage in the business of an auctioneer or auction company or has filed a bond with the Secretary of State. The Secretary of State shall forward an acknowledgment of receipt of the written notice to the assignor at the address indicated in the notice, specifying the date of receipt of the written notice and anticipated date of release of the deposit, provided there are no outstanding claims against the deposit.

(k) A judge of a municipal or superior court may order the return of the deposit prior to the expiration of two years upon evidence satisfactory to the judge that there are no outstanding claims against the deposit or order the Secretary of State to retain the deposit for a specified period beyond the two years pursuant to subdivision (j) to resolve outstanding claims against the deposit.

(*l*) If an auctioneer or auction company fails to perform any of the duties specifically imposed upon him or her pursuant to this title, any person may maintain an action for enforcement of those duties or to recover a civil penalty in the amount of one thousand dollars ($1,000), or for both enforcement and recovery.

(m) In any action to enforce these duties or to recover civil penalties, or for both enforcement and recovery, the prevailing plaintiff shall be entitled to reasonable attorney's fees and costs, in addition to the civil penalties provided under subdivision (*l*).

(n) Notwithstanding the repeal of Chapter 3.7 (commencing with Section 5700) of Division 3 of the Business and Professions Code by the act adding this chapter, any cash security in lieu of the surety bond formerly required and authorized by former Chapter 3.7

(commencing with Section 5700) of Division 3 of the Business and Professions Code, shall be transferred to, and maintained by, the Secretary of State.

(o) The Secretary of State shall charge and collect a filing fee not to exceed the cost of filing the bond or deposit filed in lieu of a bond as set forth in Section 995.710 of the Code of Civil Procedure.

(p) The Secretary of State shall enforce the provisions of this chapter that govern the filing and maintenance of bonds and deposits in lieu of bonds.

SEC. 16. Section 995.710 of the Code of Civil Procedure is amended to read:

995.710. (a) Except to the extent the statute providing for a bond precludes a deposit in lieu of bond or limits the form of deposit, the principal may, until January 1, 1999, instead of giving a bond, deposit with the officer any of the following:

(1) Lawful money of the United States. The money shall be maintained by the officer in an interest-bearing trust account.

(2) Bearer bonds or bearer notes of the United States or the State of California.

(3) Certificates of deposit payable to the officer, not exceeding the federally insured amount, issued by banks or savings associations authorized to do business in this state and insured by the Federal Deposit Insurance Corporation.

(4) Savings accounts assigned to the officer, not exceeding the federally insured amount, together with evidence of the deposit in the savings accounts with banks authorized to do business in this state and insured by the Federal Deposit Insurance Corporation.

(5) Investment certificates or share accounts assigned to the officer, not exceeding the federally insured amount, issued by savings associations authorized to do business in this state and insured by the Federal Deposit Insurance Corporation.

(6) Certificates for funds or share accounts assigned to the officer, not exceeding the guaranteed amount, issued by a credit union, as defined in Section 14002 of the Financial Code, whose share deposits are guaranteed by the National Credit Union Administration or guaranteed by any other agency approved by the Department of Financial Institutions.

(b) The deposit shall be in an amount or have a face value, or in the case of bearer bonds or bearer notes have a market value, equal to or in excess of the amount that would be required to be secured by the bond if the bond were given by an admitted surety insurer. Notwithstanding any other provision of this chapter, in the case of a deposit of bearer bonds or bearer notes other than in an action or proceeding, the officer may, in the officer's discretion, require that the amount of the deposit be determined not by the market value of the bonds or notes but by a formula based on the principal amount of the bonds or notes.

(c) The deposit shall be accompanied by an agreement executed by the principal authorizing the officer to collect, sell, or otherwise apply the deposit to enforce the liability of the principal on the deposit. The agreement shall include the address at which the principal may be served with notices, papers, and other documents under this chapter.

(d) The officer may prescribe terms and conditions to implement this section.

(e) As specified in subdivision (a), this section may not be utilized after January 1, 1999. Any principal who made a deposit pursuant to this section prior to January 1, 1999, may continue to utilize that deposit in lieu of a bond pursuant to this section and the statute that prescribes a bond; however, the deposit shall not be renewable pursuant to this section.

SEC. 17. Section 1279 of the Code of Civil Procedure is amended to read:

1279. A certified copy of the decree of the court, changing the name of a person, shall within 30 days from the date of the decree, be filed in the office of the county clerk in the county in which the person lives.

SEC. 18. Section 318 of the Corporations Code is amended to read:

318. (a) The Secretary of State shall develop and maintain a registry of distinguished women and minorities who are available to serve on corporate boards of directors. As used in this section, "minority" means an ethnic person of color including American Indians, Asians (including, but not limited to, Chinese, Japanese, Koreans, Pacific Islanders, Samoans, and Southeast Asians), Blacks, Filipinos, and Hispanics.

(b) For each woman or minority who participates in the registry, the Secretary of State shall maintain information on his or her educational, professional, community service, and corporate governance background. That information may include, but is not limited to:

(1) Paid or volunteer employment.

(2) Service in elected public office or on public boards or commissions.

(3) Directorships, officerships, and trusteeships of business and nonprofit entities, including committee experience.

(4) Professional, academic, or community awards or honors.

(5) Publications.

(6) Government relations experience.

(7) Experience with corporate constituents.

(8) Any other areas of special expertise.

(c) In addition to the information subdivision (b) requires, each woman or minority who participates in the registry may disclose any number of personal attributes that may contribute to board diversity.

Those attributes may include, but are not limited to, gender, physical disability, race, or ethnic origin.

(d) In addition to the information subdivision (b) requires, each woman or minority who participates in the registry may indicate characteristics of corporations for which he or she would consider, or is especially interested in, serving as a director. These characteristics may include, but are not limited to, company size, industry, geographic location, board meeting frequency, director time commitments, director compensation, director insurance or indemnification, or social policy concerns.

(e) Any woman or minority may nominate himself or herself to the registry by filing with the Secretary of State the information required by subdivision (b) on a form the secretary prescribes. Any registrant may attach a copy of his or her resume and up to two letters of recommendation to his or her registration form. Each registrant's registration form, together with any attached resume or letters of recommendation, shall constitute his or her registry transcript.

(f) The Secretary of State shall make appropriate rules requiring registrants to renew or update their filings with the registry, as necessary to ensure continued accuracy of registry information.

(g) The Secretary of State shall assign each registrant a file number, then enter the information described in subdivisions (b), (c), and (d) into a data base, using the registrant's file number to identify him or her. The registry data base shall not disclose any registrant's name or street address, but may list the city, county, or ZIP Code of his or her business or residence address. The secretary shall make data base information available to those persons described in subdivisions (i) and (j). The secretary may provide that access either by permitting direct data base searches or by performing data base searches on written request.

(h) The Secretary of State may also make information contained in the registry data base available to any person or entity qualified to transact business in California that regularly engages in the business of providing data base access or search services; provided, that data base access will not be construed to entitle the user to access to any registrant's transcript.

(i) The Secretary of State shall make information contained in a reasonable number of registrants' transcripts available to any corporation or its representative. A "representative", for purposes of this subdivision, may be an attorney, an accountant, or a retained executive recruiter. A "retained executive recruiter", for purposes of this subdivision, is an individual or business entity engaged in the executive search business that is regularly retained to locate qualified candidates for appointment or election as corporate directors or executive officers.

(j) The Secretary of State may also grant access to a reasonable number of registrants' transcripts to any other person who

demonstrates to the secretary's satisfaction that the person does both of the following:

(1) Seeks access to the registry in connection with an actual search for a corporate director.

(2) Intends to use any information obtained from the registry only for the purpose of finding qualified candidates for an open position on a corporate board of directors.

(k) The Secretary of State may employ reasonable means to verify that any party seeking access to registry transcript information is one of those specified in subdivision (i) or (j). To that end, the secretary may require a representative to identify its principal, but may not disclose that principal's identity to any other person.

(*l*) Upon written request specifying the registrant's file number, the Secretary of State shall provide any party entitled to access to registry transcripts with a copy of any registrant's transcript. The secretary may by rule or regulation specify other reasonable means by which persons entitled thereto may order copies of registrants' transcripts.

(m) Notwithstanding any other provision of law, no person shall be entitled to access to information the registry contains, except as this section specifically provides.

(n) The Secretary of State shall charge fees for registering with the registry, obtaining access to the registry data base, and obtaining copies of registrants' transcripts. The Secretary of State, in consultation with the Senate Commission on Corporate Governance, Shareholder Rights, and Securities Transactions, shall fix those fees by regulation. Fees shall be fixed so that the aggregate amount of all fees collected shall be sufficient to cover the total cost of administering the registry program. Registration fees shall be fixed so as to encourage qualified women and minorities to participate. Fees shall be deposited into the Secretary of State's Business Fee Fund.

(o) The Secretary of State may make any rule, regulation, guideline, or agreement the secretary deems necessary to carry out the purposes and provisions of this section.

(p) The Secretary of State may cooperate with the California Commission on the Status of Women, the California Council to Promote Business Ownership by Women, the Senate Commission on Corporate Governance, Shareholder Rights, and Securities Transactions, women's organizations, minority organizations, business and professional organizations, and any other individual or entity the secretary deems appropriate, for any of the following purposes:

(1) Promoting corporate use of the registry.

(2) Locating qualified women and minorities and encouraging them to participate in the registry.

(3) Educating interested parties on the purpose and most effective use of the registry.

The secretary may also prepare and distribute publications designed to promote informed use of the registry.

(q) The Secretary of State may seek registrants' consent to be listed in a published directory of women and minorities eligible to serve as corporate directors, which will contain a summary of each listed registrant's qualifications. The secretary may periodically publish, or cause to be published, such a directory. Only those registrants who so consent in writing may be included in the directory. The printed directory shall be provided to any person upon payment of a fee, which the Secretary of State will determine by regulation, in consultation with the Senate Commission on Corporate Governance, Shareholder Rights, and Securities Transactions.

(r) The Secretary of State shall implement this section no later than January 1, 1995.

(s) At least once in each three-year period during which the registry is available for corporate use, the Secretary of State, in consultation with the Senate Commission on Corporate Governance, Shareholder Rights, and Securities Transactions, shall report to the Legislature on the extent to which the registry has helped women and minorities progress toward achieving parity in corporate board appointments or elections.

(t) The Secretary of State shall notify each University of California campus and each California State University campus of the opportunity to maintain the registry created pursuant to this section. If more than one campus of the university or state university expresses interest in maintaining the registry, the Secretary of State shall select a campus based on a competitive selection process. If a campus is selected, the Secretary of State shall transfer the information contained in the registry, free of cost, to that campus. Any University of California or California State University campus selected to maintain the registry shall do so in a manner consistent with this section. Funds deposited in the Secretary of State's Business Fees Fund pursuant to this section shall be transferred to the university selected to maintain the registry, and shall be used to administer the registry program. The Secretary of State shall maintain the registry until a University of California or California State University campus agrees to do so.

SEC. 20. Section 12511 of the Education Code is amended to read:

12511. Pursuant to subdivision (i) of Article III of the compact, the commission shall file a copy of its bylaws and any amendment thereto with the Department of Education.

SEC. 21. Section 18342 of the Education Code is amended to read:

18342. (a) The Board of Trustees of the Santa Paula Union High School District in Ventura County may, by resolution, provide that the Santa Paula Union High School Public Library District shall be governed by a separate board of trustees. Upon adoption, the resolution shall be filed with the County Clerk of the County of

Ventura. The effective date of the resolution shall not be earlier than January 1, 1996.

(b) Upon the effective date of the resolution adopted pursuant to subdivision (a), the name of the Santa Paula Union High School Public Library District shall be the Blanchard/Santa Paula Library District.

(c) The governing board shall consist of five members, each of whom shall be a registered voter residing within the library district.

(d) Except for the initial board, members appointed pursuant to paragraph (1) of subdivision (f), and members described in subdivision (h), of the governing board shall hold office for a fixed term of four years, beginning on the last Friday in November next succeeding their appointment or election.

(e) Within 60 days after filing with the County Clerk of the County of Ventura of the resolution adopted pursuant to subdivision (a), the Board of Supervisors of the County of Ventura shall appoint the initial governing board of the library district. The appointments shall be made from the membership of the Library Commission of the Santa Paula Union High School Public Library District.

(f) The first board of trustee shall, at their first meeting, so classify themselves by lot that their terms shall expire:

(1) Two on the last Friday in November of the first even-numbered calendar year succeeding his or her appointment.

(2) Three on the last Friday of November of the second succeeding even-numbered calendar year.

(g) The district shall continue to receive revenues, including apportioned property taxes and authorized special taxes as if it were still the Santa Paula Union High School Public Library District. There shall be no change in district powers or responsibilities.

(h) Notwithstanding any other provision of law, those persons elected to the board of trustees in 1997 shall hold office for a fixed five-year term.

SEC. 22. Section 19420 of the Education Code is amended to read:

19420. Within 30 days after the filing with the county clerk or county board of supervisors of the resolution declaring the organization of the district, the supervising board of supervisors shall appoint the required number of library trustees from the district at large.

SEC. 23. Section 113 of the Government Code is amended to read:

113. The Legislature of California hereby consents to the retrocession of jurisdiction by the United States of land within this state upon and subject to each and all of the following express conditions:

(a) The United States must in writing have requested state acceptance of retrocession, and unless there is an officer of the United States empowered by a United States statute to cede jurisdiction, the

request shall be by the act of Congress. The retrocession may return all jurisdiction to the state or may provide for concurrent jurisdiction.

(b) When the conditions of subdivision (a) have been found and declared to have occurred and to exist, by the State Lands Commission, the commission shall hold a hearing to determine whether acceptance of the retrocession is in the best interests of the state. Notice of the hearing shall be published pursuant to Section 6061 in each county in which the land or any part of the land is situated and a copy of the notice shall be personally served upon the clerk of the board of supervisors of each such county. The State Lands Commission shall make rules and regulations governing the conditions and procedure of the hearings.

(c) The determination of the State Lands Commission shall be final and jurisdiction accepted shall become effective when certified copies of its orders or resolutions have been recorded in the office of the county recorder of each county in which any part of the land is situated. The State Lands Commission shall keep copies of its orders or resolutions and make them available to the public upon request.

SEC. 24. Section 126 of the Government Code is amended to read:

126. Notwithstanding any other provision of law, general or special, the Legislature of California hereby cedes concurrent criminal jurisdiction to the United States within land held by the United States upon and subject to each and all of the following express limitations, conditions, and reservations, in addition to any other limitations, conditions, or reservations prescribed by law:

(a) The lands must be held by the United States for the erection of forts, magazines, arsenals, dockyards, and other needful buildings, or other public purpose within the purview of clause 17 of Section 8 of Article I of the Constitution of the United States, or for the establishment, consolidation, and extension of national forests under the act of Congress approved March 1, 1911, (36 Stat. 961) known as the "Weeks Act," or for any other federal purposes.

(b) The cession must be pursuant to and in compliance with the laws of the United States.

(c) The United States must in writing have requested the state to cede concurrent criminal jurisdiction within such land and subject to each and all of the conditions and reservations in this section and in Section 7 of Article X of the Constitution prescribed.

(d) The State Lands Commission is authorized for the state to cede concurrent criminal jurisdiction to the United States, upon having found and declared that the conditions and reservations prescribed in subdivisions (a), (b), (c), and (g) have occurred and exist and that the cession is in the interest of the state. Certified copies of its orders or resolutions making these findings and declarations shall be recorded in the office of the county recorder of each county in which any part of the land is situated. The State Lands Commission shall keep copies of its orders or resolutions and make them available

to the public upon request. The purposes for which concurrent criminal jurisdiction is ceded shall be specified in and made a part of the orders or resolutions.

(e) Jurisdiction ceded pursuant to this section continues only so long as the land continues to belong to the United States and is held by it for the purpose for which jurisdiction is ceded in accordance and in compliance with each and all of the limitations, conditions, and reservations in this section prescribed, or for five years, whichever period is less.

(f) "Land held by the United States", as used in this section means: (1) lands acquired in fee by purchase or condemnation, (2) lands owned by the United States that are included in the military reservation by presidential proclamation or act of Congress, (3) leaseholds acquired by the United States over private lands or state-owned lands, and (4) any other lands owned by the United States including, but not limited to, public domain lands that are held for a public purpose.

(g) In ceding concurrent criminal jurisdiction, the Legislature and the state reserve jurisdiction over the land, water, and use of water with full power to control and regulate the acquisition, use, control, and distribution of water with respect to the land affected by the cession.

(h) In ceding concurrent criminal jurisdiction, the Legislature and the state except and reserve to the state all deposits of minerals, including oil and gas, in the land, and to the state, or persons authorized by the state, the right to prospect for, mine, and remove the deposits from the land.

(i) Concurrent criminal jurisdiction shall vest when certified copies of the State Lands Commission's orders or resolutions, making such finding or declaration, have been recorded in the office of the county recorder of each county in which any part of the land is situated.

The finding and declaration of the State Lands Commission provided for in subdivision (d) shall be made only after a public hearing. Notice of the hearing shall be published pursuant to Section 6061 in each county in which the land or any part of the land is situated and a copy of the notice shall be personally served upon the clerk of the board of supervisors of each such county. The State Lands Commission shall make rules and regulations governing the conditions and procedure of the hearings, which shall provide that the cost of publication and service of notice and all other expenses incurred by the commission shall be borne by the United States.

The provisions of this section do not apply to any land or water areas heretofore or hereafter acquired by the United States for migratory bird reservations in accordance with Sections 10680 to 10685, inclusive, of the Fish and Game Code.

SEC. 25. Section 12302 of the Government Code is amended to read:

12302. The Treasurer may appoint one deputy treasurer at the annual salary as the Treasurer shall establish. The Treasurer may also designate and appoint, or terminate the designation and appointment of, any officer or employee of his or her office, in addition to the deputy treasurer, to have the powers and liabilities of a deputy. The appointment or termination of appointment shall be effective upon signing by the Treasurer. The Treasurer may also appoint and fix the salaries, subject to the State Civil Service Act (Part 2 (commencing with Section 18500) of Division 5), of such officers and employees as may be necessary to carry out the duties of the office. The Treasurer may appoint as civil executive officers: one cashier, one bond officer, one deposit officer, one vault officer, one principal accountant, one bookkeeper, and one secretary-stenographer.

SEC. 26. Section 12402 of the Government Code is amended to read:

12402. The Controller may organize his or her office into divisions and may, in conformity with the State Civil Service Act (Part 2 (commencing with Section 18500) of Division 5) and the State Constitution, appoint deputy controllers, chiefs of divisions, and other subordinate officers and employees as may be necessary for the proper conduct of the office. In addition to deputy controllers that may hold title and office pursuant to the power of appointment vested in the Controller by Section 4 of Article VII of the State Constitution or pursuant to appointment of an established classification in the state civil service, the Controller may designate and appoint, or terminate the designation and appointment of, any officers or employees of his or her office having status in other classifications in the state civil service, to act as deputy controllers while performing the duties of their established classifications. Appointments and terminations of appointments made pursuant to this section shall be effective when signed by the Controller.

SEC. 27. Section 23600 of the Government Code is amended to read:

23600. The county seats of the respective counties of the state, as fixed by law and designated in this article, are declared to be the county seats of the respective counties. In any case where a county seat is an incorporated city, it includes all territory heretofore or hereafter annexed to the incorporated city.

The board of supervisors shall designate by resolution an alternative temporary county seat, which may be outside the boundaries of the county, for use in the event of war or enemy-caused disaster, or the imminence thereof, but real property outside the boundaries of the county shall not be purchased by a county for use as a temporary county seat. A copy of the resolution shall be filed with the appropriate county officials in that county and the alternative county. A different temporary county seat may be so designated at any time as circumstances indicate the desirability of such a change.

The board, and any county officer or agency as directed by the board, shall provide such facilities of any kind at the temporary county seat as appear desirable for the functioning of the government of the county at the temporary county seat in the event that it becomes necessary, pursuant to this section.

SEC. 28. Section 23713 of the Government Code is amended to read:

23713. Two copies of the complete text of a charter proposal or of any revised, amended, or repealed section ratified by the electors of a county shall be certified and authenticated by the chairperson and clerk of the governing body and attested by the county elections official, setting forth the submission of the charter to the electors of the county, and its ratification by them. One copy shall be recorded in the office of the recorder of the county and then shall be filed in the office of the county elections official.

The county elections official shall record the second copy along with the following:

(a) Certified copies of all publications and notices required of the county by this chapter or by the laws of this state in connection with an election to propose or revise a county charter.

(b) Certified copies of any arguments for or against the charter proposal or revision that were mailed to voters pursuant to Sections 9162 and 13303 of the Elections Code.

(c) A certified abstract of the vote at the election at which the charter proposal or revision was approved by the voters.

SEC. 29. Section 25004 of the Government Code is amended to read:

25004. It may adopt a seal. A description and impression of the seal shall be filed in the office of the county clerk.

SEC. 30. Section 34460 of the Government Code is amended to read:

34460. Two copies of the complete text of a charter proposal or of any amended or repealed section ratified by the voters of a city or city and county shall be certified and authenticated by the chairperson and the clerk of the governing body and attested by the city clerk, setting forth the submission of the charter to the voters of the city, and its ratification by them. One copy shall be filed with the recorder of the county in which the city is located, and one in the archives of the city. In the case of a city and county, one copy shall be filed with the recorder thereof, and one in the archives of the city and county. Each copy filed with the recorder of the county or city and county and in the archives of the city or city and county shall be filed with the following:

(a) Certified copies of all publications and notices required of the city by this chapter or by the laws of this state in connection with the calling of an election to propose, amend, or repeal a city charter.

(b) Certified copies of any arguments for or against the charter proposal, amendment, or repeal which were mailed to voters pursuant to Sections 9281 and 13303 of the Elections Code.

(c) A certified abstract of the vote at the election at which the charter proposal, amendment, or repeal was approved by the voters.

SEC. 31. Section 61230 of the Government Code is amended to read:

61230. By resolution, the board may change the name of the district. The change of name shall be effective upon recording a certified copy in the office of the county recorder of the county or counties in which the district is situated.

SEC. 32. Section 65584.3 of the Government Code is amended to read:

65584.3. (a) A city that is incorporated to promote commerce and industry, that is located in the County of Los Angeles, and that has no residentially zoned land within its boundaries on January 1, 1992, may elect to adopt a housing element that makes no provision for new housing or the share of regional housing needs as determined pursuant to Section 65584 for the current and subsequent revisions of the housing element pursuant to Section 65588, for the period of time that 20 percent of all tax increment revenue accruing from all redevelopment projects, and required to be set aside for low- and moderate-income housing pursuant to Section 33334.2 of the Health and Safety Code, is annually transferred to the Housing Authority of the County of Los Angeles.

(b) (1) The amount of tax increment to be transferred each year pursuant to subdivision (a) shall be determined at the end of each fiscal year, commencing with the 1992–93 fiscal year. This amount shall be transferred within 30 days of the agency receiving each installment of its allocation of tax increment moneys, commencing in 1993.

(2) On or before December 31, 1992, the agency shall make an additional payment to the Housing Authority of the County of Los Angeles that eliminates any indebtedness to the low- and moderate-income housing fund pursuant to Section 33334.3. This amount shall be reduced by any amount actually expended by the redevelopment agency for principal or interest payments on agency bonds issued prior to the effective date of the act that adds this section, when that portion of the agency's tax increment revenue representing the low- and moderate-income housing set-aside funds was lawfully pledged as security for the bonds, and only to the extent that other tax increment revenue in excess of the 20-percent low- and moderate-income set-aside funds is insufficient in that fiscal year to meet in full the principal and interest payments.

(c) The Department of Housing and Community Development shall annually review the calculation and determination of the amount transferred pursuant to subdivisions (a) and (b). The department may conduct an audit of these funds if and when the

Director of Housing and Community Development deems an audit appropriate.

(d) The amount transferred pursuant to subdivisions (a) and (b) shall fulfill the obligation of that city's redevelopment agency to provide for housing for low- and moderate-income families and individuals pursuant to Sections 33334.2 to 33334.16, inclusive, of the Health and Safety Code. The use of these funds for low- and moderate-income families in the region of the Southern California Association of Governments within which the city is located shall be deemed to be of benefit to the city's redevelopment project areas.

(e) (1) The amount transferred pursuant to subdivisions (a) and (b) to the Housing Authority of the County of Los Angeles shall be expended to provide housing and assistance, including, but not limited to, that specified in subdivision (e) of Section 33334.2 of the Health and Safety Code for low- and moderate-income families and individuals, in the region of the Southern California Association of Governments within which the city is located.

(2) Funds expended pursuant to this subdivision shall be expended in accordance with all of the following:

(A) The funds shall be expended for the construction of low- and moderate-income housing located no further than 15 miles from the nearest boundary line of the City of Industry.

(B) The low- and moderate-income housing constructed pursuant to this subdivision shall be in addition to any other housing required by the housing element of the general plan of the jurisdiction in which the low- and moderate-income housing is constructed.

(C) Funds may be encumbered by the Housing Authority of the County of Los Angeles for the purposes of this subdivision only after the authority has prepared a written plan for the expenditure of funds to be transferred to the authority pursuant to this subdivision and has filed a copy of this expenditure plan with the Department of Housing and Community Development.

(f) A city that meets the conditions specified in subdivision (d) shall continue to have responsibility for preparing a housing element pursuant to Section 65583 only to the extent to which the assessment of housing needs, statement of goals and objectives, and the five-year schedule of actions relate to the city's plan to maintain, preserve, and improve the housing that exists in the city on the effective date of the act which adds this section.

(g) This section shall not become operative unless and until a parcel of land, to be dedicated for the construction of a high school, is transferred pursuant to a written agreement between the City of Industry and the Pomona Unified School District, and a copy of this agreement is filed with the County Clerk of the County of Los Angeles.

SEC. 33. Section 68083 of the Government Code is amended to read:

68083. (a) Upon the occurrence of a vacancy in a municipal court judgeship, other than the sole remaining municipal court judgeship for the county, if the Governor finds there are sufficient funds for the conversion of a municipal court judgeship into a superior court judgeship and finds that the administration of justice would be advanced by such a conversion, the number of municipal court judges for the county shall then be reduced by one and the number of superior court judges for the county shall be increased by one. Prior to making a determination, the Governor shall consider the following factors:

(1) The geographic separation of the two courts.

(2) The fiscal impact of the conversion.

(3) The existence of a coordination plan approved pursuant to Section 68112 that permits blanket cross-assignment of superior court judges and municipal court judges to assist in the timely processing of cases before all of the courts in the county.

(b) For purposes of this section, a vacancy in a municipal court judgeship shall be deemed to occur only upon the appointment or election of a municipal court judge to another office, or to a court other than a superior court judgeship that was created within three years pursuant to this section, upon the removal or death of the municipal court judge holding that judgeship, or upon the resignation or retirement of a municipal court judge who has reached the age of retirement.

(c) The Governor's finding shall become effective when signed by the Governor.

(d) When a finding by the Governor that a position should be reallocated takes effect, the Judicial Council shall reallocate to the superior court the funding in support of the municipal court salary and the chamber staff positions as well as any other required funding.

SEC. 34. Section 68116 of the Government Code is amended to read:

68116. Any order of the Chairperson of the Judicial Council pursuant to this chapter shall take effect immediately upon its issuance. The Chairperson of the Judicial Council may at any time revoke or terminate his or her order or any part of the order. The order of revocation or termination shall not affect the status or validity of any transfer made prior thereto or of trials in progress, and the judges presiding in these trials shall continue doing so until the trials have concluded.

SEC. 35. Section 2224 of the Health and Safety Code is amended to read:

2224. The county clerk shall immediately file for record in the office of the county recorder of each county in which any portion of the land embraced in the district is situated, and shall also forward to each board of supervisors of each of the other counties, if any, in which any portion of the district is situated, a certified copy of the order of the board of supervisors. From and after the date of the filing

of the certified copy with all county recorders of the affected counties, the district named therein is organized as a district, with all the rights, privileges, and powers set forth in this chapter, or necessarily incident to this chapter.

SEC. 36. Section 2226 of the Health and Safety Code is amended to read:

2226. Upon receipt of the certified copy of the resolution the board of supervisors shall:

(a) Enter an order changing the district's name to the name set forth in the resolution.

(b) Transmit a certified copy of the order to the board of supervisors of any other county in which any portion of the district is situated.

(c) Record a certified copy of the order in the office of the county recorder of each of the counties in which any portion of the district is situated.

(d) File a certified copy of the order in the office of the State Board of Equalization.

From and after the date of the filing of the certified copy with all county recorders and boards of supervisors of the affected counties, the new name shall be the official name of the district.

SEC. 37. Section 4739.5 of the Health and Safety Code is amended to read:

4739.5. By resolution, the board may change the name of the district. The change of name shall be effective upon recording a certified copy in the office of the county recorder of the county or counties in which the district is situated.

SEC. 38. Section 6501 of the Health and Safety Code is amended to read:

6501. By resolution, the board may change the name of the district. Any name resulting from a change shall include the words "Sanitary District" or shall be a name that is descriptive of the functions of the district. The change of name shall be effective upon recording a certified copy in the office of the county recorder of the county or counties in which the district is situated.

SEC. 39. Section 13830 of the Health and Safety Code is amended to read:

13830. If the district lies in one county, immediately after entering the resolution in the board minutes pursuant to Section 13829, the county clerk shall cause to be recorded in the office of the county recorder of the county for which he or she is county clerk a certified copy of the resolution forming the district. Thereupon, the organization of the district shall be complete.

SEC. 40. Section 13876 of the Health and Safety Code is amended to read:

13876. A district board may adopt a resolution to change the name of the district. The resolution shall comply with the requirements of Chapter 23 (commencing with Section 7530) of Division 7 of Title 1

of the Government Code. Within 10 days of its adoption, the district board shall file a copy of the resolution with the county clerk, and the board of supervisors and the local agency formation commission of each county in which the district is located.

SEC. 42. Section 32137 of the Health and Safety Code is amended to read:

32137. The board of directors may, by resolution, change the name of the district. The change in the name of the district shall be effective upon the filing of a verified copy of the resolution with the county clerk of the county or counties in which the hospital district lies.

SEC. 43. Section 33102 of the Health and Safety Code is amended to read:

33102. The agency shall cause a certified copy of the ordinance to be filed in the office of the county clerk.

SEC. 44. Section 34116 of the Health and Safety Code is amended to read:

34116. The commission shall cause a certified copy of the ordinance to be filed with the Department of Housing and Community Development.

SEC. 45. Section 9626 of the Public Resources Code is amended to read:

9626. If the action of the board of supervisors on this request is favorable, it shall cause certified copies of the resolution to be forwarded to the board of directors initiating the request, the boards of supervisors and county clerks of all the other counties in which any portion of the district lies and the State Board of Equalization.

SEC. 46. Section 29728 of the Public Resources Code is amended to read:

29728. "Primary zone" means the delta land and water area of primary state concern and statewide significance which is situated within the boundaries of the delta, as described in Section 12220 of the Water Code, but that is not within either the urban limit line or sphere of influence line of any local government's general plan or currently existing studies, as of January 1, 1992. The precise boundary lines of the primary zone includes the land and water areas as shown on the map titled "Delta Protection Zones" on file with the State Lands Commission. Where the boundary between the primary zone and secondary zone is a river, stream, channel, or waterway, the boundary line shall be the middle of that river, stream, channel, or waterway.

SEC. 47. Section 29731 of the Public Resources Code is amended to read:

29731. "Secondary zone" means all the delta land and water area within the boundaries of the delta not included within the primary zone, subject to the land use authority of local government, and that includes the land and water areas as shown on the map titled "Delta Protection Zones" on file with the State Lands Commission.

SEC. 48. Section 30150 of the Public Resources Code is amended to read:

30150. Notwithstanding the maps adopted pursuant to Section 17 of Chapter 1330 of the Statutes of 1976, as amended by Section 29 of Chapter 1331 of the Statutes of 1976, the inland boundary of the coastal zone, as shown on the detailed coastal maps adopted by the commission on March 1, 1977, is amended by maps 1 to 35, inclusive, dated September 12, 1979, and which are on file in the office of the commission. Maps 1 to 35, inclusive, are hereby adopted by reference.

The areas deleted and added to the coastal zone are specifically shown on maps 1 to 35, inclusive, adopted by this section, and are generally described in this chapter.

SEC. 49. Section 7578 of the Public Utilities Code is amended to read:

7578. No contract of the type provided for in this article shall be valid as against any subsequent judgment creditor or any subsequent bona fide purchaser for value and without notice, unless all of the following conditions are met:

(a) The contract is evidenced by an instrument executed by the parties and duly acknowledged by the vendee, lessee, or bailee, as the case may be, or duly proved before some person authorized by law to take acknowledgments of deeds, and in the same manner as deeds are acknowledged or proved.

(b) Each car or locomotive engine so sold, leased, or hired, or contracted to be sold, leased, or hired has the name of the vendor, lessor, or bailor plainly marked in letters not less than one inch in size on each side thereof, followed by the word "owner," or "lessor," or "bailor," as the case may be.

SEC. 50. Section 7579 of the Public Utilities Code is repealed.

SEC. 51. Section 11895 of the Public Utilities Code is amended to read:

11895. A district may, by resolution adopted by a majority of the board, change its name. A certified copy of the resolution changing the name of the district shall be recorded in each county included in whole or in part within the district and shall be transmitted to the Treasurer.

SEC. 52. Section 22258 of the Public Utilities Code is amended to read:

22258. A certified copy of the resolution shall be recorded in the office of the recorder of each affected county.

SEC. 53. Section 29254 of the Public Utilities Code is repealed.

SEC. 54. Section 30205 of the Public Utilities Code is amended to read:

30205. Each director appointed by the Board of Supervisors of the County of Los Angeles shall be appointed by resolution, and each director appointed by the Mayor of the City of Los Angeles, subject to confirmation by the City Council of the City of Los Angeles, shall

be confirmed by resolution, and certified copies of the resolutions, together with notices of appointments made thereby, shall be forwarded without delay to the secretary of the district and to the County Clerk of Los Angeles County.

SEC. 55. Section 30944 of the Public Utilities Code is repealed.

SEC. 56. Section 100464 of the Public Utilities Code is repealed.

SEC. 57. Section 27123 of the Streets and Highways Code is amended to read:

27123. Those directors appointed by the board of supervisors of a county shall be appointed by resolution of the board of supervisors, and a copy of the resolution shall be filed with the county clerk or maintained with the board of supervisors, and a certified copy of the resolution shall be immediately forwarded to the Department of Transportation.

SEC. 59. Section 30321.5 of the Water Code is amended to read:

30321.5. The county clerk shall immediately cause to be filed with the county assessor and the State Board of Equalization a certificate listing all of the following:

(a) The name of the district.

(b) The date of the order declaring the district formed.

(c) The county or counties in which the district is located, and a map or plat indicating the boundaries established for the district as required by Chapter 8 (commencing with Section 54900) of Part 1 of Division 2 of Title 5 of the Government Code.

If the order declaring the district formed contains all of the information required to be in the certificate, the county clerk may cause a copy of the order to be filed in lieu of the certificate.

SEC. 60. Section 30322 of the Water Code is amended to read:

30322. The district shall have been duly incorporated upon the filing of the certificate or a copy of the order declaring the district formed with the county assessor and the State Board of Equalization.

SEC. 61. Section 30323 of the Water Code is amended to read:

30323. From and after the date of the filing with the county assessor and the State Board of Equalization, the district named in the filing is incorporated as a county water district with all the rights, privileges, and powers set forth in this division and necessarily incident to this division.

SEC. 62. Section 31006 of the Water Code is amended to read:

31006. Notwithstanding any other provision of law, any district formed under this division may, by resolution of the board of the district spread on its minutes, change the name of the district. That changed name need not include the word "county."

Certified copies of the resolution changing the name of the district shall be recorded in the office of the county recorder of every county, included in whole or in part, in the district and sent to the department.

SEC. 63. Section 34501 of the Water Code is amended to read:

34501. The board shall immediately file for record in the office of the county recorder of each affected county a certified copy of the order declaring the district formed along with a certificate listing all of the following:

(a) The name of the district.

(b) The date of formation.

(c) The county or counties in which the district is located, and a description of the boundaries of the district, or reference to a map showing the boundaries, which map shall be attached to the certificate, or reference to the county recorder's office where a description of the boundaries has been recorded.

SEC. 64. Section 34503 of the Water Code is repealed.

SEC. 65. Section 71598 of the Water Code is amended to read:

71598. A district may, by resolution of the board of directors spread on its minutes, change the name of the district. Certified copies of the resolution changing the name of the district shall be recorded in the office of the county recorder of every affected county and sent to the county clerk of every affected county.

SEC. 66. Section 10 of the County Water Authority Act (Chapter 545 of the Statutes of 1943), as amended by Section 2 of Chapter 1408 of the Statutes of 1985, is amended to read:

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

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

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

(2) By annexation to, or consolidation with, any city which, as a separate unit, has become a part of any water district whose area, as a separate unit, has become a part of any county water authority

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

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

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

(C) Upon the filing of the certified copy of the ordinance, the county clerk of the county in which the county water authority is situated shall, within 10 days, issue a certificate, describing the territory, reciting the filing of the certified copy of the ordinance and the annexation of the territory to the county water authority, and

declaring that the territory is a part of the county water authority and of the water district. The county clerk of the county in which the county water authority is situated shall transmit the original of the certificate to the secretary of the county water authority and a duplicate of the original certificate to the clerk of the governing body of the water district.

(3) Upon terms and conditions fixed by the board of directors of the county water authority and in the manner provided in subdivision (c), by direct annexation, as a separate unit, of the corporate area of any water district or city.

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

(c) The governing body of any water district or city may apply to the board of directors of the county water authority for consent to annex the corporate area of the water district or city to the county water authority. The board of directors may grant or deny the application and, in granting the application, may fix the terms and conditions upon which the corporate area of the water district or city may be annexed to, and become a part of, the county water authority. These terms and conditions may provide, among other things, for the levy by the county water authority of special taxes upon taxable property within the water district or city, in addition to the taxes authorized to be levied by the county water authority by other provisions of this act. In case these terms and conditions provide for the levy of these special taxes, the board of directors, in fixing these terms and conditions, shall specify the aggregate amount to be so raised and the number of years prescribed for raising the aggregate sum, and that substantially equal annual levies will be made for the purpose of raising the sum over the period so prescribed. The action of the board of directors, evidenced by resolution, shall be promptly transmitted to the governing body of the applying water district or city and, if the action grants consent to the annexation, the governing

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

(1) If a water district applies to a county water authority for consent to annex its corporate area, as a separate unit, the water district shall include as a part of its corporate area the corporate areas of any cities (whether one or more) which are already included within the county water authority as separate units, or the water district shall include as a part of its corporate area the corporate areas, or portion thereof, already included within the county water authority, of any water districts (whether one or more) whose

corporate areas, in whole or in part, are already included within the county water authority as separate units. That fact shall be taken into consideration by the board of directors of the county water authority in fixing the terms and conditions upon which the applying water district may be annexed to the county water authority, to the end that the areas within the unit member cities or water districts which are already a part of the county water authority, shall not be required to assume any greater financial burden or obligation to the county water authority than they would have had if they had remained a part of the county water authority as separate units.

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

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

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

(2) If a water district applies to a county water authority for consent to annex its corporate area as a separate unit, the water district shall include as a part of its corporate area lands which are in public ownership exempt from taxation by a county water authority, and not within or adjacent to the area within the water district served

with water by the district, and which are not to be supplied by the water district with water obtained from, and by reason of, its annexation to the county water authority. That fact may be taken into consideration by the board of directors of the county water authority in fixing the terms and conditions upon which the water district may be annexed to the county water authority and in determining the boundaries of the area to be annexed, and the county water authority may, in the discretion of its board of directors, annex all of the corporate area of the water district as a separate unit excepting that portion consisting of the publicly owned and tax-exempt lands.

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

(1) If the territory has not been previously annexed to, or consolidated with, the water district, upon completion of the annexation to, or consolidation with, the water district in compliance with the provisions of law applicable thereto, including this section, the territory shall become and be a part of the county water authority and the taxable property therein shall be subject to taxation thereafter for the purposes of the county water authority, including the payment of bonds and other obligations of the county water authority at the time authorized or outstanding, and the board of

directors of the county water authority may do all things necessary to enforce and make effective the terms and conditions of annexation fixed; provided that, if the applicable provisions of law governing the annexation to, or consolidation with, the water district require any notice of any election called for the purpose of determining whether the proposed annexation or consolidation shall occur, or shall require any notice of hearing or other notice to be given to the residents or electors of, or owners of property in, the territory, the notice shall contain the substance of the terms and conditions of annexation to the county water authority fixed by the board of directors of the county water authority; and provided further, that the local agency formation commission shall require that the annexation to the water district be subject to the terms and conditions fixed by the board of directors of the county water authority in addition to any other terms and conditions that may be required by the commission; and provided further, that the executive officer of the local agency formation commission having the duty of preparing, executing, and filing a certificate of completion resulting in the annexation to, or consolidation with, the water district, pursuant to the provisions of law applicable thereto, shall include in the certificate of completion the terms and conditions fixed by the board of directors of the county water authority in accordance with the provisions of this act, and shall file a duplicate of the certificate with the board of directors of the county water authority.

(2) If the territory sought to be annexed to a county water authority has been previously annexed to, or consolidated with, the water district, the governing body of the water district, upon being advised of the action of the board of directors of the county water authority, and if the action grants consent to the annexation, may submit to the qualified electors of the territory, if the territory has 12 or more registered voters, at any general or special election held therein, the proposition of the annexation to the county water authority subject to the terms and conditions fixed by the board of directors of the county water authority. Notice of the election shall be given by publication. When the notice is given by posting, the notice shall be posted at least 10 days and in three public places in the territory. When the notice is given by publication, the notice shall be published in the water district pursuant to Section 6061 of the Government Code at least 10 days before the date fixed for the election. The notice shall contain the substance of the terms and conditions fixed by the board of directors. The election shall be conducted and the returns thereof canvassed by the governing body of the water district in the manner provided by law for elections in the water district. If the proposition receives the affirmative vote of a majority of electors of the territory voting thereon at the election, the governing body of the water district shall certify the result of the election on the proposition to the board of directors of the county water authority. If the territory has less than 12 registered voters, no

election shall be required, and, following written notice to each owner of property shown on the last equalized assessment roll and the holding of a hearing not less than 10 days after that notice, the annexation may be approved upon the written consent of the owners of more than 50 percent of the assessed valuation of the territory. A certificate of proceedings shall be made by the secretary of the county water authority and filed with the county clerk of the county in which the county water authority is situated. Upon the filing thereof in the office of the county clerk of the county in which the county water authority is situated, the territory shall become, and be, a part of the county water authority, and the taxable property therein shall be subject to taxation thereafter for the purposes of the county water authority, including the payment of bonds and other obligations of the county water authority at the time authorized or outstanding, and the board of directors of the county water authority may do all things necessary to enforce and make effective the terms and conditions of annexation of the territory to the county water authority fixed by its board of directors. Upon the filing of the certificate of proceedings, the county clerk of the county in which the county water authority is situated shall, within 10 days, issue a certificate reciting the filing of the papers and the annexation of the territory to the county water authority. The county clerk of the county in which the county water authority is situated shall transmit the original of the certificate to the secretary of the county water authority.

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

Should any water district or city, the corporate area of which, in whole or in part, already is included within a county water authority as a separate unit, consolidate with a water district or city the corporate area of which, in whole or in part, already is a part of the county water authority as a separate unit, under the provisions of any law by the terms of which, after consolidation, a new district or city

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

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

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

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

(i) In determining the number of members of the board of directors of a county water authority organized under this act, and the number of votes to be cast by the directors, from the component public agencies, the corporate areas of which, in whole or in part, are included as units within the county water authority, there shall be considered only the assessed valuation of the property taxable for county water authority purposes lying in the public agencies and in the county water authority. The directors shall be appointed by the chief executive officers, with the consent and approval of the governing bodies, of the component public agencies, respectively, without regard to whether the chief executive officers or members of the governing bodies have been chosen from, or represent, areas of their respective public agencies which lie outside of the county water authority. The phrase "any water district, the corporate area of which is included within the county water authority" and the phrase "each city, the area of which shall be a part of any county water authority incorporated under this act," and like phrases, used elsewhere in this act, shall be deemed to mean and refer to any water district or city, the corporate area of which, either in whole or in part, is included within the county water authority, but the duties and obligations of the county water authority shall extend only to that part of the corporate area of the water district or city that lies within the county water authority. As to the water district, city, or public agency, the corporate area of which lies partly within and partly without the county water authority, the word "therein" and the phrase "within the city" and like words and phrases, used elsewhere in this act, shall be deemed to mean and refer to that part of the corporate area of the water district, city, or public agency which lies within the county water authority. The charges for water supplied by the county water authority to any component public agency, pursuant to its request, shall be and become an obligation of the public agency, regardless of whether the entire corporate area of the public agency is included within the county water authority, and the county water authority, in administrative and contractual matters, shall deal with the chief executive officers and governing bodies and other proper officials of the component public agencies as chosen or constituted under applicable laws governing the respective public agencies.

SEC. 67. Section 10.2 of the County Water Authority Act (Chapter 545 of the Statutes of 1943), as added by Section 3 of Chapter 1457 of the Statutes of 1976, is amended to read:

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

contiguous federal military reservations which are jointly annexed to a county water authority as a single member agency of an authority.

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

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

(1) The fixing and establishment of priorities for the use of, or right to use, water, or capacity rights in any public improvement or facilities, and the determination of, or limitation on, the quantity of, the purposes for which, and the places where, water may be delivered by the authority to the military reservation for military purposes and uses incidental thereto, as well as for nonmilitary purposes.

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

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

(4) The effective date of the annexation.

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

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

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

authority is situated shall transmit the original of said certificate to the secretary of the authority.

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

(g) On and after the effective date of the annexation, the military reservation shall be a separate unit member of the authority and shall be entitled to one representative on the board of directors of the authority. The representative shall be designated and appointed by the official in authority over the military reservation, shall hold office for a term of six years or until his or her successor is appointed and qualified, and may be recalled by that official. As a member of the board of directors, the representative of the military reservation shall be entitled to cast one vote on all questions, orders, resolutions and ordinances coming before the board notwithstanding the assessed valuation of property taxable for authority purposes within the military reservation.

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

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

SEC. 68. 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 830

An act to amend Sections 7583.9, 7583.10, and 7583.11 of, and to add Section 7583.43 to, the Business and Professions Code, relating to private patrol operators.

[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 the following:

(a) There have been several documented cases of security guards who have committed serious crimes while working with a temporary registration issued by employers pending a criminal history investigation. Many of these guards had failed to disclose criminal histories that would preclude registration by the Bureau of Security and Investigative Services within the Department of Consumer Affairs.

(b) More than 2,500 security guards a year, who were issued temporary registrations, have had their registrations revoked because of a criminal history that was unreported in the initial application.

(c) The current system which permits employers and trainers of security guards to issue temporary registration to security guards without a prior criminal background check jeopardizes the health, welfare and safety of the public, clients who contract for security guard services, and coworkers.

(d) Under existing practices, clients who use security guards may not be informed as to the existence of the criminal history status of security guards possessing temporary registrations.

(e) Existing technology and administrative processes may not permit timely criminal history investigations for applicants when private patrol operators and clients have an urgent need for security.

(f) This act is intended to ensure that clients who contract for security guards are aware that security guards working with a temporary registration have not been screened for criminal histories.

(g) This act is an interim step toward the eventual elimination of temporary registrations at that time when technological advances make timely criminal background investigations possible before applicants actually commence employment.

SEC. 2. Section 7583.9 of the Business and Professions Code is amended to read:

7583.9. (a) Upon accepting employment by a private patrol operator, any employee who performs the function of a security guard or security patrolperson who is not currently registered with the bureau, shall complete an application for registration on a form as prescribed by the director, and obtain two classifiable fingerprint cards. The applicant shall submit the application and fingerprints along with the appropriate registration fee to the bureau within three business days.

(b) If a private patrol operator pays the application fee on behalf of the applicant, nothing in this section shall preclude the private patrol operator from withholding the amount of the fee from the applicant's compensation.

(c) The licensee shall maintain supplies of applications and fingerprint cards which shall be provided by the bureau upon request.

(d) In lieu of classifiable fingerprint cards provided for in this section, the bureau may authorize applicants to submit their fingerprints into an electronic fingerprinting system administered by the Department of Justice. Applicants who submit their fingerprints by electronic means shall have their fingerprints entered into the system through a terminal operated by a law enforcement agency or other facility authorized by the Department of Justice to conduct electronic fingerprinting. The enforcement agency responsible for operating the terminal may charge a fee sufficient to reimburse it for the costs incurred in providing this service.

(e) Upon receipt of an applicant's electronic fingerprints as provided in this section, the Department of Justice shall determine whether the applicant has been convicted of any crime and forward the information to the bureau.

SEC. 3. Section 7583.10 of the Business and Professions Code is amended to read:

7583.10. The application shall be verified and shall include all of the following:

(a) The full name, residence address, telephone number, and date of birth of the employee.

(b) The name, address, telephone number, and license number of the employer and the date the employment commenced.

(c) The signature of the employee and the employer's certification that the employee has received a course in the exercise of the power to arrest.

(d) A statement as to whether the employee has been convicted of a misdemeanor, excluding minor traffic violations.

(e) A statement as to whether the employee has been convicted of a felony.

(f) The application fee provided for in this chapter or the regulations adopted pursuant thereto, except as provided in Section 7583.9.

SEC. 4. Section 7583.11 of the Business and Professions Code is amended to read:

7583.11. (a) Except as provided in subdivision (b), an employee of a licensee may be assigned to work with a temporary registration card which indicates completion of the course in the exercise of the power to arrest until the bureau issues a registration card or denies the application for registration. A temporary registration card shall in no event be valid for more than 120 days. However, the director may extend the expiration date beyond the 120 days at any time when there is an abnormal delay in processing applications for prospective security guards. For purposes of this section, the 120-day period shall commence on the date the applicant signs the application.

(b) An employee who has been convicted of a crime prior to applying for a position as a security guard shall not be issued a temporary registration card and shall not be assigned to work as a security guard until the bureau issues a permanent registration card. This subdivision shall apply only if the applicant for registration as a security guard has disclosed the conviction to the bureau on his or her application form, or if the fact of the conviction has come to the attention of the bureau through official court or other governmental documents. In no event shall the director, the department, the bureau, the chief, or the State of California be liable for any civil damages in the event of the issuance of a temporary registration where the applicant has falsified his or her application to conceal a prior criminal conviction.

(c) A temporary registration card issued pursuant to this section shall include the name, address, and license number of the private patrol operator employer or training facility that issued the temporary registration card.

(d) An employee shall, on the first day of employment, display to the client his or her registration card or temporary registration card, when it is feasible and practical to comply with this disclosure requirement. The employee shall thereafter display to the client his or her registration card or temporary registration card upon the request of the client.

SEC. 5. Section 7583.43 is added to the Business and Professions Code, to read:

7583.43. (a) A private patrol operator shall notify his or her client in writing that security guards possessing temporary registration cards have not completed a full criminal history investigation through the Department of Justice. The temporary registration card shall have printed on its face in bold letters a disclosure statement, in a form determined by the director, that the holder has not completed a full criminal history investigation and that his or her criminal history is unknown.

(b) This section does not apply to a security guard possessing a valid permanent security guard registration issued under this chapter.

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 831

An act to amend Sections 1522, 1568.02, 1568.09, 1569.17, and 1569.725 of, and to add Section 1507.1 to, the Health and Safety Code, relating to community care.

[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 1507.1 is added to the Health and Safety Code, to read:

1507.1. (a) An adult community care facility may permit incidental medical services to be provided through a home health agency licensed pursuant to Chapter 8 (commencing with Section 1725) when all of the following conditions are met:

(1) The facility, in the judgment of the department, has the ability to provide the supporting care and supervision appropriate to meet the needs of the client receiving care from a home health agency.

(2) The home health agency has been advised of the regulations pertaining to adult community care facilities and the requirements related to incidental medical services being provided in the facility.

(3) There is evidence of an agreed-upon protocol between the home health agency and the adult community care facility. The protocol shall address areas of responsibility of the home health agency and the adult community care facility and the need for communication and the sharing of client information related to the home health care plan. Client information may be shared between the home health agency and the adult community care facility relative to the client's medical condition and the care and treatment

provided to the client by the home health agency, including, but not limited to, medical information defined by the Confidentiality of Medical Information Act, Part 2.6 (commencing with Section 56) of Division 1 of the Civil Code.

(4) There is ongoing communication between the home health agency and the adult community care facility about the services provided to the client by the home health agency and the frequency and duration of care to be provided.

(b) Nothing in this section is intended to expand the scope of care and supervision for an adult community care facility, as prescribed by this chapter.

(c) Nothing in this section shall require any care or supervision to be provided by the adult community care facility beyond that which is permitted in this chapter.

(d) The department shall not be responsible for the evaluation of medical services provided to the client of the adult community care facility by the home health agency.

(e) Any regulations, policies, or procedures related to sharing client information and development of protocols, established by the department pursuant to this section, shall be developed in consultation with the State Department of Health Services and persons representing home health agencies and adult community care facilities.

SEC. 2. Section 1522 of the Health and Safety Code is amended to read:

1522. The Legislature recognizes the need to generate timely and accurate positive fingerprint identification of applicants as a condition of issuing licenses, permits, or certificates of approval for persons to operate or provide direct care services in a community care facility, foster family home, or a certified family home. Therefore, the Legislature supports the use of the fingerprint live-scan technology, as identified in the long-range plan of the Department of Justice for fully automating the processing of fingerprints and other data by the year 1999, otherwise known as the California Crime Information Intelligence System (CAL-CII), to be used for applicant fingerprints. It is the intent of the Legislature in enacting this section to require the fingerprints of those individuals whose contact with community care clients may pose a risk to the clients' health and safety.

(a) Before issuing a license or special permit to any person or persons to operate or manage a community care facility, the State Department of Social Services shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any other person specified in subdivision (b) has ever been convicted of a crime other than a minor traffic violation or arrested for any crime specified in Section 290 of the Penal Code, for violating Section 245 or 273.5, subdivision (b) of Section 273a or, prior to January 1, 1994, paragraph (2) of Section 273a of the Penal Code,

or for any crime for which the department cannot grant an exemption if the person was convicted and the person has not been exonerated. That criminal history information shall include the full criminal record, of any of those persons, and subsequent arrest information pursuant to Section 11105.2 of the Penal Code. No fee shall be charged by the Department of Justice or the State Department of Social Services for the fingerprinting of an applicant for a license or special permit to operate a facility providing nonmedical board, room, and care for six or less children or for obtaining a criminal record of the applicant pursuant to this section. The following shall apply to the criminal record information:

(1) If the State Department of Social Services finds that the applicant, or any other person specified in subdivision (b), has been convicted of a crime other than a minor traffic violation, the application shall be denied, unless the director grants an exemption pursuant to subdivision (g).

(2) If the State Department of Social Services finds that the applicant, or any person specified in subdivision (b), is awaiting trial for a crime other than a minor traffic violation, the State Department of Social Services shall cease processing the application until the conclusion of the trial.

(3) If no criminal record information has been recorded, the Department of Justice shall provide the applicant and the State Department of Social Services with a statement of that fact.

(4) If the State Department of Social Services finds after licensure that the licensee, or any other person specified in paragraph (2) of subdivision (b), has been convicted of a crime other than a minor traffic violation, the license may be revoked, unless the director grants an exemption pursuant to subdivision (g).

(5) An applicant and any other person specified in subdivision (b) shall submit a second set of fingerprints to the Department of Justice for the purpose of searching the criminal records of the Federal Bureau of Investigation, in addition to the criminal records search required by this subdivision. If an applicant and persons listed in subdivision (b) meet all other conditions for licensure, except receipt of the Federal Bureau of Investigation's criminal history information for the applicant and persons listed in subdivision (b), the department may issue a license if the applicant and each person described by subdivision (b) has signed and submitted a statement that he or she has never been convicted of a crime in the United States, other than a traffic infraction as defined in paragraph (1) of subdivision (a) of Section 42001 of the Vehicle Code. If, after licensure, the department determines that the licensee or person specified in subdivision (b) has a criminal record, the license may be revoked pursuant to Section 1550. The department may also suspend the license pending an administrative hearing pursuant to Section 1550.5.

(b) In addition to the applicant, this section shall be applicable to criminal convictions of the following persons:

(1) Adults responsible for administration or direct supervision of staff.

(2) Any person, other than a client, residing in the facility.

(3) Any person who provides client assistance in dressing, grooming, bathing, or personal hygiene. Any nurse assistant or home health aide meeting the requirements of Section 1338.5 or 1736.6, respectively, who is not employed, retained, or contracted by the licensee, and who has been certified or recertified on or after July 1, 1998, shall be deemed to meet the criminal record clearance requirements of this section. A certified nurse assistant and certified home health aide who will be providing client assistance and who falls under this exemption shall provide one copy of his or her current certification, prior to providing care, to the adult community care facility. The facility shall maintain the copy of the certification on file as long as care is being provided by the certified nurse assistant or certified home health aide at the facility. Nothing in this paragraph restricts the right of the department to exclude a certified nurse assistant or certified home health aide from a licensed community care facility pursuant to Section 1558.

(4) (A) Any staff person, volunteer, or employee who has contact with the clients. A volunteer shall be exempt from the requirements of this subdivision if the volunteer is a relative of a client in care at the facility and is not used to replace or supplement staff in providing direct care and supervision of clients.

(B) A volunteer in an adult residential facility shall be exempt from the requirements of this subdivision if he or she is a relative, significant other, or close friend of a client receiving care in the facility and the volunteer is not used to replace or supplement staff in providing direct care and supervision of clients.

(5) If the applicant is a firm, partnership, association, or corporation, the chief executive officer or other person serving in like capacity.

(6) Additional officers of the governing body of the applicant, or other persons with a financial interest in the applicant, as determined necessary by the department by regulation. The criteria used in the development of these regulations shall be based on the person's capability to exercise substantial influence over the operation of the facility.

(c) (1) Subsequent to initial licensure, any person specified in subdivision (b) and not exempted from fingerprinting shall, as a condition to employment, residence, or presence in a community care facility, be fingerprinted and sign a declaration under penalty of perjury regarding any prior criminal convictions. The licensee shall submit these fingerprints to the Department of Justice, along with a second set of fingerprints for the purpose of searching the records of the Federal Bureau of Investigation, or to comply with

paragraph (1) of subdivision (h), prior to the person's employment, residence, or initial presence in the community care facility. These fingerprints shall be on a card provided by the State Department of Social Services for the purpose of obtaining a permanent set of fingerprints and shall be submitted to the Department of Justice by the licensee or sent by electronic transmission in a manner approved by the State Department of Social Services. A licensee's failure to submit fingerprints to the Department of Justice, or to comply with paragraph (1) of subdivision (h), as required in this section, shall result in the citation of a deficiency and an immediate assessment of civil penalties in the amount of one hundred dollars ($100) per violation. The department may assess civil penalties for continued violations as permitted by Section 1548. The fingerprints shall then be submitted to the State Department of Social Services for processing. Upon request of the licensee, who shall enclose a self-addressed stamped postcard for this purpose, the Department of Justice shall verify receipt of the fingerprints.

(2) Within 14 calendar days of the receipt of the fingerprints, the Department of Justice shall notify the State Department of Social Services of the criminal record information, as provided for in subdivision (a). If no criminal record information has been recorded, the Department of Justice shall provide the licensee and the State Department of Social Services with a statement of that fact within 14 calendar days of receipt of the fingerprints. Documentation of the individual's clearance or exemption shall be maintained by the licensee and be available for inspection. If new fingerprints are required for processing, the Department of Justice shall, within 14 calendar days from the date of receipt of the fingerprints, notify the licensee that the fingerprints were illegible. When live-scan technology is operational, as defined in Section 1522.04, the Department of Justice shall notify the department, as required by that section, and notify the licensee by mail within 14 days of electronic transmission of the fingerprints to the Department of Justice if the person has no criminal history recorded. A violation of the regulations adopted pursuant to Section 1522.04 shall result in the citation of a deficiency and an immediate assessment of civil penalties in the amount of one hundred dollars ($100) per violation. The department may assess civil penalties for continued violations as permitted by Section 1548.

(3) Except for persons specified in paragraph (2) of subdivision (b), the licensee shall endeavor to ascertain the previous employment history of persons required to be fingerprinted under this subdivision. If it is determined by the State Department of Social Services, on the basis of the fingerprints submitted to the Department of Justice, that the person has been convicted of, or is awaiting trial for, a sex offense against a minor, or has been convicted for an offense specified in Section 243.4, 273a, or 273d or subdivision (a) or (b) of Section 368 of the Penal Code, or a felony, the State

Department of Social Services shall notify the licensee to act immediately to terminate the person's employment, remove the person from the community care facility, or bar the person from entering the community care facility. The State Department of Social Services may subsequently grant an exemption pursuant to subdivision (g). If the conviction or arrest was for another crime, except a minor traffic violation, the licensee shall, upon notification by the State Department of Social Services, act immediately to either (1) terminate the person's employment, remove the person from the community care facility, or bar the person from entering the community care facility; or (2) seek an exemption pursuant to subdivision (g). The State Department of Social Services shall determine if the person shall be allowed to remain in the facility until a decision on the exemption is rendered. A licensee's failure to comply with the department's prohibition of employment, contact with clients, or presence in the facility as required by this paragraph shall be grounds for disciplining the licensee pursuant to Section 1550.

(4) The department may issue an exemption on its own motion pursuant to subdivision (g) if the person's criminal history indicates that the person is of good character based on the age, seriousness, and frequency of the conviction or convictions. The department, in consultation with interested parties, shall develop regulation to establish the criteria to grant an exemption pursuant to this paragraph.

(5) Concurrently with notifying the licensee pursuant to paragraph (3), the department shall notify the affected individual of his or her right to seek an exemption pursuant to subdivision (g). The individual may seek an exemption only if the licensee terminates the person's employment or removes the person from the facility after receiving notice from the department pursuant to paragraph (3).

(d) (1) Before issuing a license, special permit, or certificate of approval to any person or persons to operate or manage a foster family home or certified family home as described in Section 1506, the State Department of Social Services or other approving authority shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any person specified in subdivision (b) has ever been convicted of a crime other than a minor traffic violation or arrested for any crime specified in Section 290 of the Penal Code or arrested for violating Section 245 or 273.5, subdivision (b) of Section 273a or, prior to January 1, 1994, paragraph (2) of Section 273a of the Penal Code, or for any crime for which the department cannot grant an exemption if the person was convicted and the person has not been exonerated. That criminal history information shall include the full criminal record, if any, of those persons. No fee shall be charged by the Department of Justice or the State Department of Social Services for the fingerprinting of an applicant for a license, special permit, or certificate of approval

described in this subdivision. The record, if any, shall be taken into consideration when evaluating a prospective applicant. The following shall apply to the criminal record information:

(A) If the applicant or other persons specified in subdivision (b) have convictions that would make the applicant's home unfit as a foster family home or a certified family home, the license, special permit, or certificate of approval shall be denied.

(B) If the State Department of Social Services finds that the applicant, or any person specified in subdivision (b) is awaiting trial for a crime other than a minor traffic violation, the State Department of Social Services or other approving authority shall cease processing the application until the conclusion of the trial.

(C) For the purposes of this subdivision, a criminal record clearance provided under Section 8712 of the Family Code may be used by the department or other approving agency.

(D) An applicant for a foster family home license or to be certified as a family home, and any other person specified in subdivision (b), shall submit a second set of fingerprints to the Department of Justice for the purpose of searching the criminal records of the Federal Bureau of Investigation, in addition to the criminal records search required by subdivision (a). If an applicant meets all other conditions for licensure, except receipt of the Federal Bureau of Investigation's criminal history information for the applicant and persons listed in subdivision (b), the department may issue a license, or the foster family agency may issue a certificate of approval, if the applicant and each person described by subdivision (b) has signed and submitted a statement that he or she has never been convicted of a crime in the United States, other than a traffic infraction as defined in paragraph (1) of subdivision (a) of Section 42001 of the Vehicle Code. If, after licensure or certification, the department determines that the licensee, certified foster parent, or person specified in subdivision (b) has a criminal record, the license may be revoked pursuant to Section 1550 and the certificate of approval revoked pursuant to subdivision (b) of Section 1534. The department may also suspend the license pending an administrative hearing pursuant to Section 1550.5.

(2) Any person specified in this subdivision shall, as a part of the application, be fingerprinted and sign a declaration under penalty of perjury regarding any prior criminal convictions or arrests for any crime against a child, for spousal or cohabitant abuse, or any crime for which the department cannot grant an exemption if the person was convicted and shall submit these fingerprints to the licensing agency or other approving authority.

(3) (A) The foster family agency shall obtain fingerprints from certified home applicants and from persons specified in subdivision (b) and shall submit them directly to the Department of Justice or send them by electronic transmission in a manner approved by the State Department of Social Services. A foster home licensee or foster

family agency shall submit these fingerprints to the Department of Justice, along with a second set of fingerprints for the purpose of searching the records of the Federal Bureau of Investigation, or to comply with paragraph (1) of subdivision (h) prior to the person's employment, residence, or initial presence. A licensee's failure to submit fingerprints to the Department of Justice, or to comply with paragraph (1) of subdivision (h), as required in this section, shall result in the citation of a deficiency, and the immediate assessment of civil penalties of one hundred dollars ($100) per violation. The State Department of Social Services may assess civil penalties for continued violations, as permitted by Section 1548. The fingerprints shall then be submitted to the State Department of Social Services for processing.

(B) Upon request of the licensee, who shall enclose a self-addressed stamped envelop for this purpose, the Department of Justice shall verify receipt of fingerprints. Within five working days of the receipt of the criminal record or information regarding criminal convictions from the Department of Justice, the department shall notify the applicant of any criminal arrests or convictions. If no arrests or convictions are recorded, the Department of Justice shall provide the foster home licensee or the foster family agency with a statement of that fact concurrent with providing the information to the State Department of Social Services.

(4) If the State Department of Social Services finds that the applicant, or any other person specified in subdivision (b), has been convicted of a crime other than a minor traffic violation, the application shall be denied, unless the director grants an exemption pursuant to subdivision (g).

(5) If the State Department of Social Services finds after licensure or the granting of the certificate of approval that the licensee, certified foster parent, or any other person specified in paragraph (2) of subdivision (b), has been convicted of a crime other than a minor traffic violation, the license or certificate of approval may be revoked by the department or the foster family agency, whichever is applicable, unless the director grants an exemption pursuant to subdivision (g). A licensee's failure to comply with the department's prohibition of employment, contact with clients, or presence in the facility as required by paragraph (3) of subdivision (c) shall be grounds for disciplining the licensee pursuant to Section 1550.

(e) The State Department of Social Services shall not use a record of arrest to deny, revoke, or terminate any application, license, employment, or residence unless the department investigates the incident and secures evidence, whether or not related to the incident of arrest, that is admissible in an administrative hearing to establish conduct by the person that may pose a risk to the health and safety of any person who is or may become a client. The State Department of Social Services is authorized to obtain any arrest or conviction records or reports from any law enforcement agency as necessary to

the performance of its duties to inspect, license, and investigate community care facilities and individuals associated with a community care facility.

(f) (1) For purposes of this section or any other provision of this chapter, a conviction means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which the State Department of Social Services is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, notwithstanding a subsequent order pursuant to Sections 1203.4 and 1203.4a of the Penal Code permitting the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment. For purposes of this section or any other provision of this chapter, the record of a conviction, or a copy thereof certified by the clerk of the court or by a judge of the court in which the conviction occurred, shall be conclusive evidence of the conviction. For purposes of this section or any other provision of this chapter, the arrest disposition report certified by the Department of Justice, or documents admissible in a criminal action pursuant to Section 969b of the Penal Code, shall be prima facie evidence of the conviction, notwithstanding any other provision of law prohibiting the admission of these documents in a civil or administrative action.

(2) For purposes of this section or any other provision of this chapter, the department shall consider criminal convictions from another state or federal court as if the criminal offense was committed in this state.

(g) (1) After review of the record, the director may grant an exemption from disqualification for a license or special permit as specified in paragraphs (1) and (4) of subdivision (a), or for a license, special permit, or certificate of approval as specified in paragraphs (4) and (5) of subdivision (d), or for employment, residence, or presence in a community care facility as specified in paragraphs (3), (4), and (5) of subdivision (c), if the director has substantial and convincing evidence to support a reasonable belief that the applicant and the person convicted of the crime, if other than the applicant, are of such good character as to justify issuance of the license or special permit or granting an exemption for purposes of subdivision (c). Except as otherwise provided in this subdivision, no exemption shall be granted pursuant to this subdivision if the conviction was for an offense specified in Section 220, 243.4, or 264.1, subdivision (a) of Section 273a or, prior to January 1, 1994, paragraph (1) of Section 273a, Section 273d, 288, or 289, subdivision (a) of Section 290, or subdivision (a) or (b) of Section 368 of the Penal Code, or was a conviction of another crime against an individual specified in subdivision (c) of Section 667.5 of the Penal Code. The director may

grant an exemption if the employee or prospective employee, who was convicted of a crime against an individual prescribed in paragraph (1), (2), (7), or (8) of subdivision (c) of Section 667.5 of the Penal Code, has been rehabilitated as provided in Section 4852.03 of the Penal Code, has maintained the conduct required in Section 4852.05 of the Penal Code for at least 10 years, and has the recommendation of the district attorney representing the employee's county of residence, or if the employee or prospective employee has received a certificate of rehabilitation pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code.

(2) The department shall not prohibit a person from being employed or having contact with clients in a facility on the basis of a denied criminal record exemption request or arrest information unless the department complies with the requirements of Section 1558.

(h) (1) For purposes of compliance with this section, the department may permit an individual to transfer a current criminal records clearance, as defined in subdivision (a), from one facility to another, as long as the criminal record clearance has been processed through a state licensing district office, and is being transferred to another state licensing district office. The request shall be in writing to the department, and shall include a copy of the person's driver's license or valid identification card issued by the Department of Motor Vehicles, or a valid photo identification issued by another state or the United States government if the person is not a California resident. Upon request of the licensee, who shall enclose a self-addressed stamped envelope for this purpose, the department shall verify whether the individual has a clearance that can be transferred.

(2) The State Department of Social Services shall hold criminal record clearances in its active files for a minimum of two years after an employee is no longer employed at a licensed facility in order for the criminal record clearance to be transferred.

(i) The full criminal record obtained for purposes of this section may be used by the department or by a licensed adoption agency as a clearance required for adoption purposes.

(j) If a licensee or facility is required by law to deny employment or to terminate employment of any employee based on written notification from the state department that the employee has a prior criminal conviction or is determined unsuitable for employment under Section 1558, the licensee or facility shall not incur civil liability or unemployment insurance liability as a result of that denial or termination.

(k) (1) The Department of Justice shall coordinate with the State Department of Social Services to establish and implement an automated live-scan processing system for fingerprints in the district offices of the Community Care Licensing Division of the State

Department of Social Services by July 1, 1999. These live-scan processing units shall be connected to the main system at the Department of Justice by July 1, 1999, and shall become part of that department's pilot project in accordance with its long-range plan. The State Department of Social Services may charge a fee for the costs of processing a set of live-scan fingerprints.

(2) The Department of Justice shall provide a report to the Senate and Assembly fiscal committees, the Assembly Human Services Committee, and to the Senate Health and Human Services Committee by April 15, 1999, regarding the completion of backlogged criminal record clearance requests for all facilities licensed by the department and the progress on implementing the automated live-scan processing system in the district offices pursuant to paragraph (1).

(*l*) Amendments to the provisions of this section made in the 1998 calendar year shall be implemented commencing 60 days after the effective date of the act amending this section in the 1998 calendar year, except those provisions for the submission of fingerprints for searching the records of the Federal Bureau of Investigation, which shall be implemented commencing January 1, 1999.

SEC. 3. Section 1568.02 of the Health and Safety Code is amended to read:

1568.02. (a) The department shall license residential care facilities for persons with chronic, life-threatening illness under a separate category.

(b) The licensee of every facility required to be licensed pursuant to this chapter shall provide the following basic services for each resident:

(1) Room and board. No more than two residents shall share a bedroom, except that the director, in his or her discretion, may waive this limitation.

(2) Access to adequate common areas, including recreation areas and shared kitchen space with adequate refrigerator space for the storage of medications.

(3) Consultation with a nutritionist, including consultation on cultural dietary needs.

(4) Personal care services, as needed, including, but not limited to, activities of daily living. A facility may have a written agreement with another agency to provide personal care services, except that the facility shall be responsible for meeting the personal care needs of each resident.

(5) Access to case management for social services. A facility may have a written agreement with another agency to provide case management.

(6) Development, implementation, and monitoring of an individual services plan. All health services components of the plan shall be developed and monitored in coordination with the home

health agency and shall reflect the elements of the resident's plan of treatment developed by the home health agency.

(7) Intake and discharge procedures, including referral to outplacement resources.

(8) Access to psychosocial support services.

(9) Access to community-based and county services system.

(10) Access to a social and emotional support network of the resident's own choosing, within the context of reasonable visitation rules established by the facility.

(11) Access to intermittent home health care services in accordance with paragraph (1) of subdivision (c).

(12) Access to substance abuse services in accordance with paragraph (3) of subdivision (c).

(13) Adequate securable storage space for personal items.

(c) The licensee of every facility required to be licensed pursuant to this chapter shall demonstrate, at the time of application, all of the following:

(1) Written agreement with a licensed home health agency. Resident information may be shared between the home health agency and the residential care facility for persons with chronic, life-threatening illness relative to the resident's medical condition and the care and treatment provided to the resident by the home health agency including, but not limited to, medical information, as defined by the Confidentiality of Medical Information Act, Part 2.6 (commencing with Section 56) of Division 1 of the Civil Code. Any regulations, policies, or procedures related to sharing resident information and development of protocols, established by the department pursuant to this section, shall be developed in consultation with the State Department of Health Services and persons representing home health agencies and residential care facilities for persons with chronic, life-threatening illness.

(2) Written agreement with a psychosocial services agency, unless the services are provided by the facility's professional staff.

(3) Written agreement with a substance abuse agency, unless the services are provided by the facility's professional staff.

(4) Ability to provide linguistic services for residents who do not speak English.

(5) Ability to provide culturally appropriate services.

(6) Ability to reasonably accommodate residents with physical disabilities, including, but not limited to, residents with motor impairments, physical access to areas of the facility utilized by residents, and access to interpreters for hearing-impaired residents.

(7) Written nondiscrimination policy which shall be posted in a conspicuous place in the facility.

(8) Written policy on drug and alcohol use, including, but not limited to, a prohibition on the use of illegal substances.

(d) Any facility licensed pursuant to this chapter which intends to serve a specific population, such as women, family units, minority and

ethnic populations, or homosexual men or women, shall demonstrate, at the time of application, the ability and resources to provide services that are appropriate to the targeted population.

(e) No facility licensed pursuant to this chapter shall house more than 25 residents, except that the director may authorize a facility to house up to 50 residents.

(f) If the administrator is responsible for more than two facilities, the facility manager shall meet the qualifications of both the administrator and the facility manager, as described in Sections 87864 and 87864.1 of Title 22 of the California Code of Regulations.

(g) Each licensee shall employ additional personnel as necessary to meet the needs of the residents and comply with the requirements of this chapter and the regulations adopted by the department pursuant to this chapter. On-call personnel shall be able to be on the facility premises within 30 minutes of the receipt of a telephone call.

SEC. 4. Section 1568.09 of the Health and Safety Code is amended to read:

1568.09. It is the intent of the Legislature in enacting this section to require the fingerprints of those individuals whose contact with residents of residential care facilities for persons with a chronic, life-threatening illness may pose a risk to the residents' health and safety.

Therefore, the Legislature supports the use of the fingerprint live-scan technology, as identified in the long-range plan of the Department of Justice for fully automating the processing of fingerprints and other data by the year 1999, otherwise known as the California Crime Information Intelligence System (CAL-CII), to be used for applicant fingerprints. It is the intent of the Legislature, in enacting this section, to require the fingerprints of those individuals whose contact with community care clients may pose a risk to the clients' health and safety.

(a) Before issuing a license to any person or persons to operate or manage a residential care facility, the department shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any other person specified in subdivision (b) has ever been convicted of a crime other than a minor traffic violation or arrested for any crime specified in Section 290 of the Penal Code, for violating Section 245 or 273.5, subdivision (b) of Section 273a or, prior to January 1, 1994, paragraph (2) of Section 273a of the Penal Code, or for any crime for which the department cannot grant an exemption if the person was convicted and the person has not been exonerated. That criminal history information shall include the full criminal record, if any, of those persons, and subsequent arrest information pursuant to Section 11105.2 of the Penal Code. The following shall apply to the criminal record information:

(1) If the State Department of Social Services finds that the applicant or any other person specified in subdivision (b) has been convicted of a crime, other than a minor traffic violation, the

application shall be denied, unless the director grants an exemption pursuant to subdivision (f).

(2) If the State Department of Social Services finds that the applicant, or any person specified in subdivision (b) is awaiting trial for a crime other than a minor traffic violation, the State Department of Social Services shall cease processing the application until the conclusion of the trial.

(3) If no criminal record information has been recorded, the Department of Justice shall provide the applicant and the State Department of Social Services with a statement of that fact.

(4) If the State Department of Social Services finds after licensure that the licensee, or any other person specified in paragraph (2) of subdivision (b), has been convicted of a crime other than a minor traffic violation, the license may be revoked, unless the director grants an exemption pursuant to subdivision (f).

(5) An applicant and any other person specified in subdivision (b) shall submit to the Department of Justice a second set of fingerprints for the purpose of searching the records of the Federal Bureau of Investigation, in addition to the search required by this subdivision. If an applicant meets all other conditions for licensure, except receipt of the Federal Bureau of Investigation's criminal history information for the applicant and persons listed in subdivision (b), the department may issue a license if the applicant and each person described by subdivision (b) has signed and submitted a statement that he or she has never been convicted of a crime in the United States, other than a traffic infraction as defined in paragraph (1) of subdivision (a) of Section 42001 of the Vehicle Code. If, after licensure, the department determines that the licensee or person specified in subdivision (b) has a criminal record, the license may be revoked pursuant to subdivision (a) of Section 1568.82. The department may also suspend the license pending an administrative hearing pursuant to subdivision (b) of Section 1568.82.

(b) In addition to the applicant, the provisions of this section shall be applicable to criminal convictions of the following persons:

(1) Adults responsible for administration or direct supervision of staff of the facility.

(2) Any person, other than a resident, residing in the facility.

(3) Any person who provides resident assistance in dressing, grooming, bathing, or personal hygiene. Any nurse assistant or home health aide meeting the requirements of Section 1338.5 or 1736.6, respectively, who is not employed, retained, or contracted by the licensee, and who has been certified or recertified on or after July 1, 1998, shall be deemed to meet the criminal record clearance requirements of this section. A certified nurse assistant and certified home health aide who will be providing client assistance and who falls under this exemption shall provide one copy of his or her current certification, prior to providing care, to the residential care facility for persons with chronic, life-threatening illness. The facility shall

maintain the copy of the certification on file as long as care is being provided by the certified nurse assistant or certified home health aide at the facility. Nothing in this paragraph restricts the right of the department to exclude a certified nurse assistant or certified home health aide from a licensed residential care facility for persons with chronic, life-threatening illness pursuant to Section 1568.092.

(4) (A) Any staff person, volunteer, or employee who has contact with the residents.

(B) A volunteer shall be exempt from the requirements of this subdivision if he or she is a relative, significant other, or close friend of a client receiving care in the facility and the volunteer does not provide direct care and supervision of residents. A volunteer who provides direct care and supervision shall be exempt if the volunteer is a resident's spouse, significant other, close friend, or family member and provides direct care and supervision to that resident only at the request of the resident.

(5) If the applicant is a firm, partnership, association, or corporation, the chief executive officer or other person serving in that capacity.

(6) Additional officers of the governing body of the applicant, or other persons with a financial interest in the applicant, as determined necessary by the department by regulation. The criteria used in the development of these regulations shall be based on the person's capability to exercise substantial influence over the operation of the facility.

(c) (1) (A) Subsequent to initial licensure, any person specified in subdivision (b) and not exempted from fingerprinting shall, as a condition to employment, residence, or presence in a residential care facility, be fingerprinted and sign a declaration under penalty of perjury regarding any prior criminal convictions. The licensee shall submit these fingerprints to the Department of Justice, along with a second set of fingerprints, for the purpose of searching the records of the Federal Bureau of Investigation, or to comply with paragraph (1) of subdivision (g), prior to the person's employment, residence, or initial presence in the residential care facility.

(B) These fingerprints shall be on a card provided by the State Department of Social Services for the purpose of obtaining a permanent set of fingerprints and submitted to the Department of Justice by the licensee or sent by electronic transmission in a manner approved by the State Department of Social Services. A licensee's failure to submit fingerprints to the Department of Justice, or to comply with paragraph (1) of subdivision (g), as required in this section, shall result in the citation of a deficiency and an immediate assessment of civil penalties in the amount of one hundred dollars ($100) per violation. The State Department of Social Services may assess civil penalties for continued violations as allowed in Section 1568.0822. The fingerprints shall then be submitted to the State Department of Social Services for processing. The licensee shall

maintain and make available for inspection documentation of the individual's clearance or exemption.

(2) (A) Paragraph (1) shall cease to be implemented when the State Department of Social Services adopts emergency regulations pursuant to Section 1522.04, and shall become inoperative when those regulations become final.

(B) A violation of the regulations adopted pursuant to Section 1522.04 shall result in the citation of a deficiency and an immediate assessment of civil penalties in the amount of one hundred dollars ($100) per violation. The department may assess civil penalties for continued violations as permitted by Section 1568.0822.

(3) Within 14 calendar days of the receipt of the fingerprints, the Department of Justice shall notify the State Department of Social Services of the criminal record information, as provided for in this subdivision. If no criminal record information has been recorded, the Department of Justice shall provide the licensee and the State Department of Social Services with a statement of that fact within 14 calendar days of receipt of the fingerprints. If new fingerprints are required for processing, the Department of Justice shall, within 14 calendar days from the date of receipt of the fingerprints, notify the licensee that the fingerprints were illegible. When live-scan technology is operational, as defined in Section 1522.04, the Department of Justice shall notify the department, as required by that section, and shall notify the licensee by mail within 14 days of electronic transmission of the fingerprints to the Department of Justice, if the person has no criminal history record.

(4) Except for persons specified in paragraph (2) of subdivision (b), the licensee shall endeavor to ascertain the previous employment history of persons required to be fingerprinted under this subdivision. If it is determined by the State Department of Social Services, on the basis of the fingerprints submitted to the Department of Justice, that the person has been convicted of a sex offense against a minor, an offense specified in Section 243.4, 273a, or 273d, subdivision (a) or (b) of Section 368 of the Penal Code, or a felony, the department shall notify the licensee to act immediately to terminate the person's employment, remove the person from the residential care facility, or bar the person from entering the residential care facility. The department may subsequently grant an exemption pursuant to subdivision (f). If the conviction was for another crime, except a minor traffic violation, the licensee shall, upon notification by the department, act immediately to either (1) terminate the person's employment, remove the person from the residential care facility, or bar the person from entering the residential care facility; or (2) seek an exemption pursuant to subdivision (f). The department shall determine if the person shall be allowed to remain in the facility until a decision on the exemption is rendered. A licensee's failure to comply with the department's prohibition of employment, contact with clients, or presence in the

facility as required by this paragraph shall be grounds for disciplining the licensee pursuant to Section 1568.082.

(5) The department may issue an exemption on its own motion pursuant to subdivision (f) if the person's criminal history indicates that the person is of good character based on the age, seriousness, and frequency of the conviction or convictions. The department, in consultation with interested parties, shall develop regulations to establish the criteria to grant an exemption pursuant to this paragraph.

(6) Concurrently with notifying the licensee pursuant to paragraph (4), the department shall notify the affected individual of his or her right to seek an exemption pursuant to subdivision (f). The individual may seek an exemption only if the licensee terminates the person's employment or removes the person from the facility after receiving notice from the department pursuant to paragraph (4).

(d) (1) For purposes of this section or any other provision of this chapter, a conviction means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which the department is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of the sentence, notwithstanding a subsequent order pursuant to Sections 1203.4 and 1203.4a of the Penal Code permitting that person to withdraw his or her plea of guilty and to enter a plea of not guilty, setting aside the verdict of guilty, or dismissing the accusation, information, or indictment. For purposes of this chapter, the record of a conviction, or a copy thereof certified by the clerk of the court or by a judge of the court in which the conviction occurred, shall be conclusive evidence of the conviction. For purposes of this section or any other provision of this chapter, the arrest disposition report certified by the Department of Justice, or documents admissible in a criminal action pursuant to Section 969b of the Penal Code, shall be prima facie evidence of the conviction, notwithstanding any other provision of law prohibiting the admission of these documents in a civil or administrative action.

(2) For purposes of this section or any other provision of this chapter, the department shall consider criminal convictions from another state or federal court as if the criminal offense was committed in this state.

(e) The State Department of Social Services shall not use a record of arrest to deny, revoke, or terminate any application, license, employment, or residence unless the department investigates the incident and secures evidence, whether or not related to the incident of arrest, that is admissible in an administrative hearing to establish conduct by the person that may pose a risk to the health and safety of any person who is or may become a client. The State Department of Social Services is authorized to obtain any arrest or conviction

records or reports from any law enforcement agency as necessary to the performance of its duties to inspect, license, and investigate community care facilities and individuals associated with a community care facility.

(f) (1) After review of the record, the director may grant an exemption from disqualification for a license as specified in paragraphs (1) and (4) of subdivision (a), or for employment, residence, or presence in a residential care facility as specified in paragraphs (4), (5), and (6) of subdivision (c) if the director has substantial and convincing evidence to support a reasonable belief that the applicant and the person convicted of the crime, if other than the applicant, are of such good character as to justify issuance of the license or special permit or granting an exemption for purposes of subdivision (c). However, no exemption shall be granted pursuant to this subdivision if the conviction was for an offense specified in Section 220, 243.4, or 264.1, subdivision (a) of Section 273a or, prior to January 1, 1994, paragraph (1) of Section 273a, Section 273d, 288, or 289, subdivision (a) of Section 290, or subdivision (a) or (b) of Section 368 of the Penal Code, or was a conviction of another crime against an individual specified in subdivision (c) of Section 667.5 of the Penal Code.

(2) The department shall not prohibit a person from being employed or having contact with clients in a facility on the basis of a denied criminal record exemption request or arrest information unless the department complies with the requirements of Section 1568.092.

(g) (1) For purposes of compliance with this section, the department may permit an individual to transfer a current criminal records clearance, as defined in subdivision (a), from one facility to another, as long as the criminal record clearance has been processed through a state licensing district office, and is being transferred to another state licensing district office. The request shall be in writing to the department, and shall include a copy of the person's driver's license or valid identification card issued by the Department of Motor Vehicles, or a valid photo identification issued by another state or the United States government if the person is not a California resident. Upon request of the licensee, who shall enclose a self-addressed stamped envelope for this purpose, the department shall verify whether the individual has a clearance that can be transferred.

(2) The State Department of Social Services shall hold criminal records clearances in its active files for a minimum of two years after an employee is no longer employed at a licensed facility in order for the criminal records clearance to be transferred.

(h) If a licensee or facility is required by law to deny employment or to terminate employment of any employee based on written notification from the state department that the employee has a prior criminal conviction or is determined unsuitable for employment

under Section 1568.092, the licensee or facility shall not incur civil liability or unemployment insurance liability as a result of that denial or termination.

(i) (1) The Department of Justice shall charge a fee sufficient to cover its cost in providing services to comply with the 14-day requirement contained in subdivision (c) for provision to the department of criminal record information.

(2) Paragraph (1) shall cease to be implemented when the department adopts emergency regulations pursuant to Section 1522.04, and shall become inoperative when permanent regulations are adopted under that section.

(j) Amendments to the provisions of this section made in the 1998 calendar year shall be implemented commencing 60 days after the effective date of the act amending this section in the 1998 calendar year, except those provisions for the submission of fingerprints for searching the records of the Federal Bureau of Investigation, which shall be implemented commencing January 1, 1999.

SEC. 5. Section 1569.17 of the Health and Safety Code is amended to read:

1569.17. The Legislature recognizes the need to generate timely and accurate positive fingerprint identification of applicants as a condition of issuing licenses, permits, or certificates of approval for persons to operate or provide direct care services in a residential care facility for the elderly. The Legislature supports the use of the fingerprint live-scan technology, as identified in the long-range plan of the Department of Justice for fully automating the processing of fingerprints and other data by the year 1999. It is the intent of the Legislature in enacting this section to require the fingerprints of those individuals whose contact with clients of residential care facilities for the elderly may pose a risk to the clients' health and safety.

(a) Before issuing a license to any person or persons to operate or manage a residential care facility for the elderly, the department shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any other person specified in subdivision (b) has ever been convicted of a crime other than a minor traffic violation or arrested for any crime specified in Section 290 of the Penal Code, for violating Section 245 or 273.5, subdivision (b) of Section 273a or, prior to January 1, 1994, paragraph (2) of Section 273a of the Penal Code, or for any crime for which the department cannot grant an exemption if the person was convicted and the person has been exonerated. That criminal history information shall include the full criminal record, if any, of those persons, and subsequent arrest information pursuant to Section 11105.2 of the Penal Code. The following shall apply to the criminal record information:

(1) If the State Department of Social Services finds that the applicant or any other person specified in subdivision (b) has been

convicted of a crime, other than a minor traffic violation, the application shall be denied, unless the director grants an exemption pursuant to subdivision (f).

(2) If the State Department of Social Services finds that the applicant, or any person specified in subdivision (b) is awaiting trial for a crime other than a minor traffic violation, the State Department of Social Services shall cease processing the application until the conclusion of the trial.

(3) If no criminal record information has been recorded, the Department of Justice shall provide the applicant and the State Department of Social Services with a statement of that fact.

(4) If the State Department of Social Services finds after licensure that the licensee, or any other person specified in paragraph (2) of subdivision (b), has been convicted of a crime other than a minor traffic violation, the license may be revoked, unless the director grants an exemption pursuant to subdivision (f).

(5) An applicant and any person specified in subdivision (b) shall submit a second set of fingerprints to the Department of Justice, for the purpose of searching the records of the Federal Bureau of Investigation, in addition to the search required by subdivision (a). If an applicant meets all other conditions for licensure, except receipt of the Federal Bureau of Investigation's criminal history information for the applicant and persons listed in subdivision (b), the department may issue a license if the applicant and each person described by subdivision (b) has signed and submitted a statement that he or she has never been convicted of a crime in the United States, other than a traffic infraction as defined in paragraph (1) of subdivision (a) of Section 42001 of the Vehicle Code. If, after licensure, the department determines that the licensee or person specified in subdivision (b) has a criminal record, the license may be revoked pursuant to Section 1569.50. The department may also suspend the license pending an administrative hearing pursuant to Sections 1569.50 and 1569.51.

(b) In addition to the applicant, the provisions of this section shall be applicable to criminal convictions of the following persons:

(1) Adults responsible for administration or direct supervision of staff.

(2) Any person, other than a client, residing in the facility.

(3) Any person who provides client assistance in dressing, grooming, bathing, or personal hygiene. Any nurse assistant or home health aide meeting the requirements of Section 1338.5 or 1736.6, respectively, who is not employed, retained, or contracted by the licensee, and who has been certified or recertified on or after July 1, 1998, shall be deemed to meet the criminal record clearance requirements of this section. A certified nurse assistant and certified home health aide who will be providing client assistance and who falls under this exemption shall provide one copy of his or her current certification, prior to providing care, to the residential care facility

for the elderly. The facility shall maintain the copy of the certification on file as long as the care is being provided by the certified nurse assistant or certified home health aide at the facility. Nothing in this paragraph restricts the right of the department to exclude a certified nurse assistant or certified home health aide from a licensed residential care facility for the elderly pursuant to Section 1569.58.

(4) (A) Any staff person, volunteer, or employee who has frequent and routine contact with the clients.

(B) A volunteer shall be exempt from the requirements of this subdivision if he or she is a relative, significant other, or close friend of a client receiving care in the facility and the volunteer is not used to replace or supplement staff in providing direct care and supervision of clients.

(5) If the applicant is a firm, partnership, association, or corporation, the chief executive officer or other person serving in like capacity.

(6) Additional officers of the governing body of the applicant, or other persons with a financial interest in the applicant, as determined necessary by the department by regulation. The criteria used in the development of these regulations shall be based on the person's capability to exercise substantial influence over the operation of the facility.

(c) (1) (A) Subsequent to initial licensure, any person specified in subdivision (b) and not exempted from fingerprinting shall, as a condition to employment, residence, or presence in a residential facility for the elderly, be fingerprinted and sign a declaration under penalty of perjury regarding any prior criminal convictions. The licensee shall submit these fingerprints, along with a second set of fingerprints for the purpose of searching the records of the Federal Bureau of Investigation, to the Department of Justice, or to comply with paragraph (1) of subdivision (g) prior to the person's employment, residence, or initial presence in the residential care facility for the elderly.

(B) These fingerprints shall be on a card provided by the State Department of Social Services for the purpose of obtaining a permanent set of fingerprints and submitted to the Department of Justice by the licensee or sent by electronic transmission in a manner approved by the State Department of Social Services. A licensee's failure to submit fingerprints to the Department of Justice, or to comply with paragraph (1) of subdivision (g), as required in this section, shall result in the citation of a deficiency and an immediate assessment of civil penalties in the amount of one hundred dollars ($100) per violation. The State Department of Social Services may assess civil penalties for continued violations as permitted by Section 1569.49. The fingerprints shall then be submitted to the State Department of Social Services for processing. Documentation of the individual's clearance or exemption shall be maintained by the licensee and be available for inspection. When live-scan technology

is operational, as defined in Section 1522.04, the Department of Justice shall notify the department, as required by that section, and notify the licensee by mail within 14 days of electronic transmission of the fingerprints to the Department of Justice, if the person has no criminal record. A violation of the regulations adopted pursuant to Section 1522.04 shall result in the citation of a deficiency and an immediate assessment of civil penalties in the amount of one hundred dollars ($100) per violation. The department may assess civil penalties for continued violations as permitted by Section 1569.49.

(2) Within 14 calendar days of the receipt of the fingerprints, the Department of Justice shall notify the State Department of Social Services of the criminal record information, as provided for in this subdivision. If no criminal record information has been recorded, the Department of Justice shall provide the licensee and the State Department of Social Services with a statement of that fact within 14 calendar days of receipt of the fingerprints. If new fingerprints are required for processing, the Department of Justice shall, within 14 calendar days from the date of receipt of the fingerprints, notify the licensee that the fingerprints were illegible.

(3) Except for persons specified in paragraph (2) of subdivision (b), the licensee shall endeavor to ascertain the previous employment history of persons required to be fingerprinted under this subdivision. If it is determined by the State Department of Social Services, on the basis of the fingerprints submitted to the Department of Justice, that the person has been convicted of a sex offense against a minor, an offense specified in Section 243.4, 273a, or 273d, subdivision (a) or (b) of Section 368 of the Penal Code, or a felony, the State Department of Social Services shall notify the licensee in writing within 15 calendar days of the receipt of the notification from the Department of Justice to act immediately to terminate the person's employment, remove the person from the residential care facility for the elderly, or bar the person from entering the residential care facility for the elderly. The State Department of Social Services may subsequently grant an exemption pursuant to subdivision (f). If the conviction was for another crime, except a minor traffic violation, the licensee shall, upon notification by the State Department of Social Services, act immediately to either (1) terminate the person's employment, remove the person from the residential care facility for the elderly, or bar the person from entering the residential care facility for the elderly; or (2) seek an exemption pursuant to subdivision (f). The department shall determine if the person shall be allowed to remain in the facility until a decision on the exemption is rendered by the department. A licensee's failure to comply with the department's prohibition of employment, contact with clients, or presence in the facility as required by this paragraph shall be grounds for disciplining the licensee pursuant to Section 1569.50.

(4) The department may issue an exemption on its own motion pursuant to subdivision (f) if the person's criminal history indicates that the person is of good character based on the age, seriousness, and frequency of the conviction or convictions. The department, in consultation with interested parties, shall develop regulations to establish the criteria to grant an exemption pursuant to this paragraph.

(5) Concurrently with notifying the licensee pursuant to paragraph (4), the department shall notify the affected individual of his or her right to seek an exemption pursuant to subdivision (f). The individual may seek an exemption only if the licensee terminates the person's employment or removes the person from the facility after receiving notice from the department pursuant to paragraph (4).

(d) (1) For purposes of this section or any other provision of this chapter, a conviction means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that the department is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of the sentence, notwithstanding a subsequent order pursuant to the provisions of Sections 1203.4 and 1203.4a of the Penal Code permitting a person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment. For purposes of this section or any other provision of this chapter, the record of a conviction, or a copy thereof certified by the clerk of the court or by a judge of the court in which the conviction occurred, shall be conclusive evidence of the conviction. For purposes of this section or any other provision of this chapter, the arrest disposition report certified by the Department of Justice or documents admissible in a criminal action pursuant to Section 969b of the Penal Code shall be prima facie evidence of the conviction, notwithstanding any other provision of law prohibiting the admission of these documents in a civil or administrative action.

(2) For purposes of this section or any other provision of this chapter, the department shall consider criminal convictions from another state or federal court as if the criminal offense was committed in this state.

(e) The State Department of Social Services shall not use a record of arrest to deny, revoke, or terminate any application, license, employment, or residence unless the department investigates the incident and secures evidence, whether or not related to the incident of arrest, that is admissible in an administrative hearing to establish conduct by the person that may pose a risk to the health and safety of any person who is or may become a client. The State Department of Social Services is authorized to obtain any arrest or conviction records or reports from any law enforcement agency as necessary to the performance of its duties to inspect, license, and investigate

community care facilities and individuals associated with a community care facility.

(f) (1) After review of the record, the director may grant an exemption from disqualification for a license as specified in paragraphs (1) and (4) of subdivision (a), or for employment, residence, or presence in a residential care facility for the elderly as specified in paragraphs (4), (5), and (6) of subdivision (c) if the director has substantial and convincing evidence to support a reasonable belief that the applicant and the person convicted of the crime, if other than the applicant, are of such good character as to justify issuance of the license or special permit or granting an exemption for purposes of subdivision (c). However, no exemption shall be granted pursuant to this subdivision if the conviction was for an offense specified in Section 220, 243.4, or 264.1, subdivision (a) of Section 273a or, prior to January 1, 1994, paragraph (1) of Section 273a, Section 273d, 288, or 289, subdivision (a) of Section 290, or subdivision (a) or (b) of Section 368 of the Penal Code, or was a conviction of another crime against an individual specified in subdivision (c) of Section 667.5 of the Penal Code. The director shall notify in writing the licensee or the applicant of his or her decision within 60 days of receipt of all information from the applicant and other sources determined necessary by the director for the rendering of a decision pursuant to this subdivision.

(2) The department shall not prohibit a person from being employed or having contact with clients in a facility on the basis of a denied criminal record exemption request or arrest information unless the department complies with the requirements of Section 1569.58.

(g) (1) For purposes of compliance with this section, the department may permit an individual to transfer a current criminal records clearance, as defined in subdivision (a), from one facility to another, as long as the criminal record clearance has been processed through a state licensing district office, and is being transferred to another state licensing district office. The request shall be submitted, in writing to the department, and shall include a copy of the person's driver's license or valid identification card issued by the Department of Motor Vehicles, or a valid photo identification issued by another state or the United States government if the person is not a California resident. Upon request of the licensee, who shall enclose a self-addressed stamped envelope for this purpose, the department shall verify whether the individual has a clearance that can be transferred.

(2) The State Department of Social Services shall hold criminal records clearances in its active files for a minimum of two years after an employee is no longer employed at a licensed facility in order for the criminal records clearances to be transferred under this section.

(h) If a licensee or facility is required by law to deny employment or to terminate employment of any employee based on written

notification from the state department that the employee has a prior criminal conviction or is determined unsuitable for employment under Section 1569.58, the licensee or facility shall not incur civil liability or unemployment insurance liability as a result of that denial or termination.

(i) Amendments to the provisions of this section made in the 1998 calendar year shall be implemented commencing 60 days after the effective date of the act amending this section in the 1998 calendar year, except those provisions for the submission of fingerprints for searching the records of the Federal Bureau of Investigation, which shall be implemented commencing January 1, 1999.

SEC. 6. Section 1569.725 of the Health and Safety Code is amended to read:

1569.725. (a) A residential care facility for the elderly may permit incidental medical services to be provided through a home health agency, licensed pursuant to Chapter 8 (commencing with Section 1725), when all of the following conditions are met:

(1) The facility, in the judgment of the department, has the ability to provide the supporting care and supervision appropriate to meet the needs of the resident receiving care from a home health agency.

(2) The home health agency has been advised of the regulations pertaining to residential care facilities for the elderly and the requirements related to incidental medical services being provided in the facility.

(3) There is evidence of an agreed-upon protocol between the home health agency and the residential care facility for the elderly. The protocol shall address areas of responsibility of the home health agency and the facility and the need for communication and the sharing of resident information related to the home health care plan. Resident information may be shared between the home health agency and the residential care facility for the elderly relative to the resident's medical condition and the care and treatment provided to the resident by the home health agency including, but not limited to, medical information, as defined by the Confidentiality of Medical Information Act, Part 2.6 (commencing with Section 56) of Division 1 of the Civil Code.

(4) There is ongoing communication between the home health agency and the residential care facility for the elderly about the services provided to the resident by the home health agency and the frequency and duration of care to be provided.

(b) Nothing in this section is intended to expand the scope of care and supervision for a residential care facility for the elderly, as prescribed by this chapter.

(c) Nothing in this section shall require any care or supervision to be provided by the residential care facility for the elderly beyond that which is permitted in this chapter.

(d) The department shall not be responsible for the evaluation of medical services provided to the resident of the residential care facility for the elderly by the home health agency.

(e) Any regulations, policies, or procedures related to sharing resident information and development of protocols, established by the department pursuant to this section, shall be developed in consultation with the State Department of Health Services and persons representing home health agencies and residential care facilities for the elderly.

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 832

An act to add Section 24313 to the Education Code, relating to the State Teachers' Retirement System, and making an appropriation therefor.

[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 24313 is added to the Education Code, to read:

24313. (a) Any member who retired for service under Option 2 or Option 3 with an effective date prior to January 1, 1991, whose option beneficiary had died prior to January 1, 1995, shall receive, effective January 1, 1999, the retirement allowance without modification for the option if all of the following conditions are met:

(1) The retired member is living as of January 1, 1999.

(2) The retired member has not elected a new option beneficiary under Section 24306.

(3) The retirement allowance without modification for the option payable as of January 1, 1999, is greater than the amount payable under the option, plus the amounts from annual benefit

improvements, ad hoc benefit increases and payments from the Supplemental Benefit Maintenance Account.

(4) The retired member does not inform the system in writing, on a form provided by the system, within 30 days of receipt of the notification of the change to the retirement allowance without modification for the option, of his or her election to continue to receive the option allowance.

(b) Any member who retired for service under Option 4 or Option 5 with an effective date prior to January 1, 1991, whose option beneficiary had died prior to January 1, 1999, shall receive effective January 1, 1999, the retirement allowance without modification for the option if all the following conditions are met:

(1) The retired member is living as of January 1, 1999.

(2) The retired member has not elected a new option beneficiary under Section 24306.

(3) The retirement allowance without modification for the option payable as of January 1, 1999, is greater than the amount payable under the option, plus the amount from annual benefit improvements, ad hoc benefit increases and payments from the Supplemental Benefit Maintenance Account.

(4) The retired member does not inform the system in writing, on a form provided by the system, within 30 days of receipt of the notification of the change to the retirement allowance without modification for the option, of his or her election to continue to receive the option allowance.

(c) The change to the retirement allowance without modification for the option, shall be consistent with Section 22453.

(d) A member retired for service who receives the retirement allowance without modification for the option provided under this section, shall not elect a new option beneficiary under Section 24306.

(e) The cost of this section shall be paid by the transfer for that purpose of the one-time gain accrued to the State Teachers' Retirement System from the difference between the contributions received pursuant to Sections 22901 and 22950 in the 1997–98 fiscal year minus the normal cost as displayed in the June 30, 1997, actuarial valuation.

CHAPTER 833

An act to add Section 701.5 to the Penal Code, relating to minors, 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. Section 701.5 is added to the Penal Code, to read:

701.5. (a) Notwithstanding subdivision (b), no peace officer or agent of a peace officer shall use a person who is 12 years of age or younger as a minor informant.

(b) No peace officer or agent of a peace officer shall use a person under the age of 18 years as a minor informant, except as authorized pursuant to the Stop Tobacco Access to Kids Enforcement Act (Division 8.5 (commencing with Section 22950) of the Business and Professions Code) for the purposes of that act, unless the peace officer or agent of a peace officer has obtained an order from the court authorizing the minor's cooperation.

(c) Prior to issuing any order pursuant to subdivision (b), the court shall find, after consideration of (1) the age and maturity of the minor, (2) the gravity of the minor's alleged offense, (3) the safety of the public, and (4) the interests of justice, that the agreement to act as a minor informant is voluntary and is being entered into knowingly and intelligently.

(d) Prior to the court making the finding required in subdivision (c), all of the following conditions shall be satisfied:

(1) The court has found probable cause that the minor committed the alleged offense. The finding of probable cause shall only be for the purpose of issuing the order pursuant to subdivision (b), and shall not prejudice the minor in any future proceedings.

(2) The court has advised the minor of the mandatory minimum and maximum sentence for the alleged offense.

(3) The court has disclosed the benefit the minor may obtain by cooperating with the peace officer or agent of a peace officer.

(4) The minor's parent or guardian has consented to the agreement by the minor unless the parent or guardian is a suspect in the criminal investigation.

(e) For purposes of this section, "minor informant" means a minor who participates, on behalf of a law enforcement agency, in a prearranged transaction or series of prearranged transactions with direct face-to-face contact with any party, when the minor's participation in the transaction is for the purpose of obtaining or attempting to obtain evidence of illegal activity by a third party and where the minor is participating in the transaction for the purpose of reducing or dismissing a pending juvenile petition against the minor.

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 ensure that minors are not placed in a position of danger of injury or death as a result of being used as an informant, it is necessary that this act take effect immediately.

CHAPTER 834

An act to amend Sections 14087.3, 14087.4, 14087.47, 14087.55, 14088.18, 14088.6, 14089, 14089.8, 14139.13, 14204, 14499.5, and 14594 of the Welfare and Institutions Code, relating to Medi-Cal.

[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 14087.3 of the Welfare and Institutions Code is amended to read:

14087.3. (a) The director may contract, on a bid or nonbid basis, with any qualified individual, organization, or entity to provide services to, arrange for or case manage the care of Medi-Cal beneficiaries. At the director's discretion, the contract may be exclusive or nonexclusive, statewide or on a more limited geographic basis, and include provisions to do the following:

(1) Perform targeted case management of selected services or beneficiary populations where it is expected that case management will reduce program expenditures.

(2) Provide for delivery of services in a manner consistent with managed care principles, techniques, and practices directed at ensuring the most cost-effective and appropriate scope, duration, and level of care.

(3) Provide for alternate methods of payment, including, but not limited to, a prospectively negotiated reimbursement rate, fee-for-service, retainer, capitation, shared savings, volume discounts, lowest bid price, negotiated price, rebates, or other basis.

(4) Secure services directed at any or all of the following:

(A) Recruiting and organizing providers to care for Medi-Cal beneficiaries.

(B) Designing and implementing fiscal or other incentives for providers to participate in the Medi-Cal program in cost-effective ways.

(C) Linking beneficiaries with cost-effective providers.

(5) Provide for:

(A) Medi-Cal managed care plans contracting under this chapter or Chapter 8 (commencing with Section 14200) to share in the efficiencies and economies realized by those contracts.

(B) Effective coordination between contractors operating under this article and Medi-Cal managed care plans in the management of health care provided to Medi-Cal beneficiaries.

(6) Permit individual physicians, groups of physicians, or other providers to participate in a manner that supports the organized system mode of operation.

(7) Encourage group practices with relationships with hospitals having low unit costs.

(b) The director may require individual physicians, groups of physicians, or other providers as a condition of participation under the Medi-Cal program, to enter into capitated contracts pursuant to this section in order to correct or prevent irregular or abusive billing practices. No physician, groups of physicians, or other providers shall be reimbursed for services rendered to Medi-Cal beneficiaries if the physician, group of physicians, or other providers has declined to enter into a contract required by the director pursuant to this section.

(c) The department shall seek federal waivers necessary to allow for federal financial participation under this section.

(d) (1) Notwithstanding the provisions of this chapter, the department shall determine preliminary per capita rates of payment for services provided to Medi-Cal beneficiaries enrolled in a managed care program contracting in areas specified by the director for expansion of the Medi-Cal managed care program under this section, or Sections 14018.7, 14087.31, 14087.35, 14087.36, 14087.38, or 14087.96. The department shall provide to each managed care plan the preliminary contract rates and source documents at least 60 days prior to the effective date of each new rate period.

(2) On or before June 1, 1999, the department shall enter into a memorandum of understanding with the managed care plans subject to paragraph (1) regarding the development of capitation rates. This memorandum of understanding, which is intended to ensure that capitation rates become effective in a timely manner and remain stable throughout the rate year, shall establish all of the following:

(A) A process and timetable for the managed care plans to review and comment on any modifications in the rate development methodology.

(B) A process and timetable for managed care plans to provide comments on the draft rates.

(C) A process and timetable for the department to respond to managed care plan comments on the draft rates.

(D) A process and timetable to managed care finalize capitation rates.

SEC. 2. Section 14087.4 of the Welfare and Institutions Code is amended to read:

14087.4. (a) Any contract made pursuant to this article may be renewed if the provider continues to meet the requirements of this chapter, regulations promulgated pursuant thereto, and the contract. Failure to meet these requirements shall be cause for

nonrenewal of the contract. The department may condition renewal on timely completion of a mutually agreed upon plan of correction of any deficiencies.

(b) The department may terminate or decline to renew a contract, in whole or in part, when the director determines that such action is necessary to protect the health of the beneficiaries or the funds appropriated to carry out the Medi-Cal program. Nonrenewal or termination under this article shall not qualify the applicant for an administrative hearing including a hearing pursuant to Section 14123.

(c) In order to achieve maximum cost savings the Legislature hereby determines that an expedited contract process for contracts under this article is necessary. Therefore contracts under this article shall be exempt from the provisions of Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code.

(d) For any contract entered into pursuant to this article, the Commissioner of Corporations shall, at the director's request and with all due haste, grant an exemption from the provisions of Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code for purposes of carrying out the contract.

SEC. 3. Section 14087.47 of the Welfare and Institutions Code is amended to read:

14087.47. (a) The department may contract under this article with the Counties of Sonoma, Placer, and San Luis Obispo, which have been selected by the department through a request for proposal process, for the operation of a fee-for-service managed care program administered by the county through which primary care, specialty care, and case management are provided to residents of the county who are Medi-Cal eligible persons designated by the director.

(b) (1) Upon receipt of the necessary federal medicaid freedom of choice waivers, the department may, consistent with the federal waivers, assign to a fee-for-service managed care program residents of the county who are Medi-Cal eligible persons with Medi-Cal aid codes designated by the director. The department may require that assigned beneficiaries receive their Medi-Cal services and case management through the program.

(2) Medi-Cal eligible county residents who are dually eligible for Medi-Cal and Medicare benefits shall not, however, be assigned to a fee-for-service managed care program.

(3) Medi-Cal beneficiaries eligible for benefits through age, blindness, or disability, as defined in Title XVI of the Social Security Act (42 U.S.C. Sec. 1381 et. seq.) shall be assigned to a fee-for-service managed care program. However, each county participating in the program authorized by this section shall allow these beneficiaries to select a provider or providers of their choice and shall ensure that existing provider-patient relationships are permitted to continue.

(4) Services covered by the California Children's Services program shall not be incorporated into a fee-for-service managed

care program in a manner that is inconsistent with Article 2.98 (commencing with Section 14094).

(5) A foster child may be enrolled voluntarily in a fee-for-service managed care program if the county director of social services, or his or her delegated representative, makes an individual determination that enrollment in a fee-for-service managed care program is in the best interest of the child. In determining what is in the best interest of the foster child, the county director of social services, or his or her delegated representative, shall consult with the child's caretaker, and shall include the decision of whether or not to enroll the child in a fee-for-service managed care program in the child's case plan provided for pursuant to subdivision (b) of Section 11400.

(c) Each contract entered into by the department under this section may have an initial term of up to three years. Contracts may be renewed for periods of up to three years upon a determination by the department that a contract is successful.

(d) The department shall periodically evaluate each fee-for-service managed care program through an independent assessment as required under the department's approved federal waiver request to determine if the program is successfully providing quality health care while not placing the Medi-Cal program or counties at additional financial risk. The assessment shall evaluate quality of care, access, the provision of preventive health care, and costs. The department shall terminate a contract when the department finds that the fee-for-service managed care program is unsuccessful.

(e) In order to ensure maximum cost effectiveness, the Legislature hereby determines that an expedited contract process for contracts entered into under this section between the department and the counties is necessary. Therefore, contracts under this article shall be exempt from Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code.

(f) Fee-for-service managed care program contractors shall ensure broad participation of primary care and other providers, including specialists, safety net and traditional Medi-Cal providers, in the program and shall contract with any primary care provider that agrees to provide services in accord with the same terms and conditions that the fee-for-service managed care program contractor requires of other primary care providers. To the extent possible, the fee-for-service managed care program contractor shall contract with primary care providers in a manner that minimizes the disruption of existing relationships between Medi-Cal eligible residents and their primary care providers.

(g) Medi-Cal eligible county residents in the aid codes designated by the director shall be informed about the fee-for-service managed care program through the health care options process established by the department in each county in which the program is operated

consistent with the health care options process authorized in other Medi-Cal managed care counties designated by the director.

(h) Designated Medi-Cal residents shall have the right to select a primary care provider from among the primary care providers contracting with the fee-for-service managed care program contractor and to change primary care providers. Covered Medi-Cal residents shall be informed of this right and the selection and change processes through the health care options process established in the county by the department consistent with the health care options process authorized in other Medi-Cal managed care counties designated by the director. The fee-for-service managed care program contractor shall also include this information in its membership materials.

(i) The board of supervisors of each county participating in the project authorized by this section shall establish or cause to be established an advisory committee comprised of county, physician, hospital, clinic, and beneficiary representatives to advise the county on the implementation and operation of the project provided for under this section.

(j) The department may adopt regulations to implement this section in accordance with the Administrative Procedure Act, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The initial adoption of any emergency regulations implementing this section shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare. Initial emergency regulations adopted pursuant to this subdivision shall remain in effect for no more than 120 days.

SEC. 4. Section 14087.55 of the Welfare and Institutions Code is amended to read:

14087.55. (a) The department shall enter into contracts with counties under this article, and shall be bound by the rates, terms, and conditions negotiated by the negotiator.

(b) In implementing this article, the department may enter into contracts for the provision of essential administrative and other services.

(c) Contracts under this article may be on a nonbid basis and shall be exempt from the provisions of Chapter 2 (commencing with Section 10290) of Part 2 of the Public Contract Code.

SEC. 5. Section 14088.18 of the Welfare and Institutions Code is amended to read:

14088.18. (a) In order to increase the number of nonprofit providers under this article, the department may enter into contracts each fiscal year under this section with eligible nonprofit organizations to provide a one-time interest-bearing loan, repayable at the Pooled Money Investment Account rate, to that eligible organization.

(b) Contracts entered into pursuant to this section shall be limited to contracts within those counties where the department does not have contracts authorized by this article on the effective date of this section.

(c) Any loan entered into pursuant to this section shall not exceed one hundred thousand dollars ($100,000).

(d) The department shall adopt standards and procedures for loan applications and repayment of the loans made pursuant to this section.

(e) The department shall make no loan pursuant to this section until the department has made savings payments to contractors who have entered into contracts under this article on or before the effective date of this section.

(f) For purposes of this section, "eligible nonprofit organization" means any organization which meets all of the following requirements:

(1) The organization is exempt from taxation under Section 501(c)(3) or 501(c)(25)(C)(iii) of the federal Internal Revenue Code.

(2) The organization is organized to provide health care to the medically underserved and to provide services in service areas.

SEC. 6. Section 14088.6 of the Welfare and Institutions Code is amended to read:

14088.6. In order to achieve maximum cost savings, the Legislature hereby determines that an expedited contract process for contracts under this article is necessary. Therefore, contracts under this article may be on a nonbid basis and shall be exempt from the provisions of Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code.

SEC. 7. Section 14089 of the Welfare and Institutions Code is amended to read:

14089. (a) The purpose of this article is to provide a comprehensive program of managed health care plan services to Medi-Cal recipients residing in clearly defined geographical areas. It is, further, the purpose of this article to create maximum accessibility to health care services by permitting Medi-Cal recipients the option of choosing from among two or more managed health care plans or fee-for-service managed case arrangements, including, but not limited to, health maintenance organizations, prepaid health plans, primary care case management plans. Independent practice associations, health insurance carriers, private foundations, and university medical centers systems, not-for-profit clinics, and other primary care providers, may be offered as choices to Medi-Cal recipients under this article if they are organized and operated as managed care plans, for the provision of preventive managed health care plan services.

(b) The negotiator may seek proposals and then shall contract based on relative costs, extent of coverage offered, quality of health

services to be provided, financial stability of the health care plan or carrier, recipient access to services, cost-containment strategies, peer and community participation in quality control, emphasis on preventive and managed health care services and the ability of the health plan to meet all requirements for both of the following:

(1) Certification, where legally required, by the Commissioner of Corporations and the Insurance Commissioner.

(2) Compliance with all of the following:

(A) The health plan shall satisfy all applicable state and federal legal requirements for participation as a Medi-Cal managed care contractor.

(B) The health plan shall meet any standards established by the department for the implementation of this article.

(C) The health plan receives the approval of the department to participate in the pilot project under this article.

(c) (1) (A) The proposals shall be for the provision of preventive and managed health care services to specified eligible populations on a capitated, prepaid or postpayment basis.

(B) Enrollment in a Medi-Cal managed health care plan under this article shall be voluntary for beneficiaries eligible for the federal Supplemental Security Income for the Aged, Blind, and Disabled Program (Subchapter 16 (commencing with Section 1381) of Chapter 7 of Title 42 of the United States Code).

(2) The cost of each program established under this section shall not exceed the total amount which the department estimates it would pay for all services and requirements within the same geographic area under the fee-for-service Medi-Cal program.

(d) The department shall enter into contracts pursuant to this article, and shall be bound by the rates, terms, and conditions negotiated by the negotiator.

(e) (1) An eligible beneficiary shall be entitled to enroll in any health care plan contracted for pursuant to this article that is in effect for the geographic area in which he or she resides. Enrollment shall be for a minimum of six months. Contracts entered into pursuant to this article shall be for at least one but no more than three years. The director shall make available to recipients information summarizing the benefits and limitations of each health care plan available pursuant to this section in the geographic area in which the recipient resides.

(2) No later than 30 days following the date a Medi-Cal or AFDC recipient is informed of the health care options described in paragraph (1) of subdivision (e), the recipient shall indicate his or her choice in writing of one of the available health care plans and his or her choice of primary care provider or clinic contracting with the selected health care plan.

(3) The health care options information described in paragraph (1) of subdivision (e) shall include the following elements:

(A) Each beneficiary or eligible applicant shall be provided with the name, address, and telephone number of each primary care provider, by specialty, or clinic participating in each health care plan. The name, address, and telephone number of each specialist participating in each health care plan shall be made available by contacting the health care options contractor or the health care plan.

(B) Each beneficiary or eligible applicant shall be informed that he or she may choose to continue an established patient-provider relationship in a managed care option, if his or her treating provider is a primary care provider contracting with any of the health plans available and has the available capacity and agrees to continue to treat that beneficiary or eligible applicant.

(C) Each beneficiary or eligible applicant shall be informed that if he or she fails to make a choice, he or she shall be assigned to, and enrolled in, a health care plan.

(4) At the time the beneficiary or eligible applicant selects a health care plan, the department shall, when applicable, encourage the beneficiary or eligible applicant to also indicate, in writing, his or her choice of primary care provider contracting with the selected health care plan.

(5) Commencing with the implementation of a geographic managed care project in a designated county, a Medi-Cal or AFDC beneficiary who does not make a choice of health care plans in accordance with paragraph (2), shall be assigned to and enrolled in an appropriate health care plan providing service within the area in which the beneficiary resides.

(6) If a beneficiary or eligible applicant does not choose a primary care provider or clinic, or does not select any primary care provider who is available, the health care plan selected by or assigned to the beneficiary shall ensure that the beneficiary selects a primary care provider or clinic within 30 days after enrollment or is assigned to a primary care provider within 40 days after enrollment.

(7) Any Medi-Cal or AFDC beneficiary dissatisfied with the primary care provider or health care plan shall be allowed to select or be assigned to another primary care provider within the same health care plan. In addition, the beneficiary shall be allowed to select or be assigned to another health care plan contracted for pursuant to this article that is in effect for the geographic area in which he or she resides in accordance with Section 1903(m)(2)(F)(ii) of the Social Security Act.

(8) The department or its contractor shall notify a health care plan when it has been selected by or assigned to a beneficiary. The health care plan that has been selected or assigned by a beneficiary shall notify the primary care provider that has been selected or assigned. The health care plan shall also notify the beneficiary of the health care plan and primary care provider selected or assigned.

(9) This section shall be implemented in a manner consistent with any federal waiver that is required to be obtained by the department to implement this section.

(f) A participating county may include within the plan or plans providing coverage pursuant to this section, employees of county government, and others who reside in the geographic area and who depend upon county funds for all or part of their health care costs.

(g) The negotiator and the department shall establish pilot projects to test the cost effectiveness of delivering benefits as defined in subdivisions (a) through (f).

(h) The California Medical Assistance Commission shall evaluate the cost effectiveness of these pilot projects after one year of implementation. Pursuant to this evaluation the commission may either terminate or retain the existing pilot projects.

(i) Funds may be provided to prospective contractors to assist in the design, development, and installation of appropriate programs. The award of these funds shall be based on criteria established by the department.

(j) In implementing this article, the department may enter into contracts for the provision of essential administrative and other services. Contracts entered into under this subdivision may be on a noncompetitive bid basis and shall be exempt from Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code.

SEC. 8. Section 14089.8 of the Welfare and Institutions Code is amended to read:

14089.8. (a) In order to achieve maximum cost savings, the Legislature finds and declares that an expedited contract process for contracts under this article is necessary.

(b) Contracts under this article shall be on a nonbid basis, and shall be exempt from Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code.

SEC. 9. Section 14139.13 of the Welfare and Institutions Code is amended to read:

14139.13. (a) Any contract entered into pursuant to this article may be renewed if the long-term care services agency continues to meet the requirements of this article and the contract. Failure to meet these requirements shall be cause for nonrenewal of the contract. The department may condition renewal on timely completion of a mutually agreed upon plan of corrections of any deficiencies.

(b) The department may terminate or decline to renew a contract in whole or in part when the director determines that the action is necessary to protect the health of the beneficiaries or the funds appropriated to the Medi-Cal program. The administrative hearing requirements of Section 14123 do not apply to the nonrenewal or termination of a contract under this article.

(c) In order to achieve maximum cost savings the Legislature hereby determines that an expedited contract process for contracts under this article is necessary. Therefore, contracts under this article shall be exempt from Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code.

(d) The Commissioner of Corporations shall, at the director's request, immediately grant an exemption from Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code for purposes of carrying out any contract entered into pursuant to this article.

SEC. 10. Section 14204 of the Welfare and Institutions Code is amended to read:

14204. (a) Pursuant to the provisions of this chapter, the department may contract with one or more prepaid health plans in order to provide the benefits authorized under this chapter and Chapter 7 (commencing with Section 14000) of this part. The department may contract with one or more children's hospitals on an exclusive basis for a specified population in a specified geographic area. Contracts entered into pursuant to this chapter may be awarded on a bid or nonbid basis.

(b) In order to achieve maximum cost savings the Legislature hereby determines that expedited contract process for contracts under this chapter is necessary. Therefore, contracts under this chapter shall be exempt from Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code.

SEC. 11. Section 14499.5 of the Welfare and Institutions Code is amended to read:

14499.5. (a) (1) In carrying out the intent of this article, the director shall contract for the operation of one local pilot program. Special consideration shall be given to approving a program contracted through county government in Santa Barbara County.

(2) Notwithstanding the limitations contained in Section 14490, the director may enter into, or extend, contracts with the local pilot program in Santa Barbara County pursuant to paragraph (1) for periods that do not exceed three years.

(b) The establishment of a pilot program pursuant to this section shall be contingent upon the availability of state and federal funding. The program shall include the following components:

(1) Local authority for administration, fiscal management, and delivery of services, but not including eligibility determination.

(2) Physician case management.

(3) Cost containment through provider incentives and other means.

(c) The program for the pilot project shall include a plan and budget for delivery of services, administration, and evaluation. During the first year of the pilot program, the amount of the state contract shall equal 95 percent of total projected Medi-Cal expenditures for delivery of services and for administration based on

fee-for-service conditions in the program county. During the remaining years of the pilot project Medi-Cal expenditures in the program county shall be no more than 100 percent of total projected expenditures for delivery of services and for administration based on any combination of the following paragraphs:

(1) Relevant prior fee-for-service Medi-Cal experience in the program county.

(2) The fee-for-service Medi-Cal experience in comparable counties or groups of counties.

(3) Medi-Cal experience of the pilot project in the program county if, as determined by the department, the scope, level, and duration of, and expenditures for, any services used in setting the rates under this paragraph would be comparable to fee-for-service conditions were they to exist in the program county and would be more actuarially reliable for use in ratesetting than data available for use in applying paragraph (1) or (2).

The projected total expenditure shall be determined annually according to an acceptable actuarial process. The data elements used by the department shall be shared with the proposed contractor.

(d) The director shall accept or reject the proposal within 30 days after the date of receipt. If a decision is made to reject the proposal, the director shall set forth the reasons for this decision in writing. Upon approval of the proposal, a contract shall be written within 60 days. After signature by the local contractor, the State Department of Health Services and the Department of General Services shall execute the contract within 60 days.

(e) The director shall seek the necessary state and federal waivers to enable operation of the program. If the federal waivers for delivery of services under this plan are not granted, the department is under no obligation to contract for implementation of the program.

(f) For purposes of Section 1343 of the Health and Safety Code, the Santa Barbara Regional Health Authority shall be considered to be a county-operated pilot program contracting with the State Department of Health Services pursuant to this article, and notwithstanding any other provision of law, during the period that this contract is in effect, the contractor shall be exempt from the provisions of the Knox-Keene Health Care Service Plan Act of 1975, Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code, relative to the services provided to Medi-Cal beneficiaries under the terms and provisions of the pilot program.

(g) Dental services may be included within the services provided in this pilot program.

(h) Any federal demonstration funding for this pilot program shall be made available to the county within 60 days upon notification of the award without the state retaining any portion not previously specified in the grant application as submitted.

(i) (1) (A) Commencing January 1, 1996, the California Medical Assistance Commission may negotiate exclusive contracts and rates

on behalf of the department with the Santa Barbara Regional Health Authority in the implementation of this section.

(B) Contracts entered into under this article may be on a noncompetitive bid basis and shall be exempt from Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code. These contracts shall have no force or effect unless approved by the Department of Finance.

(C) The department shall enter into contracts pursuant to this article, and shall be bound by the terms and conditions related to the rates negotiated by the negotiator.

(2) The department shall implement this subdivision to the extent that the following apply:

(A) Its implementation does not revise the status of the pilot program as a federal demonstration project.

(B) Existing federal waivers apply to the pilot program as revised by this subdivision, or the federal government extends the applicability of the existing federal waivers or authorizes additional federal waivers for the implementation of the program.

(3) The implementation of this subdivision shall not affect the pilot program's having met any of the requirements of Part 3.5 (commencing with Section 1175) of Division 1 of the Health and Safety Code and this division applicable to the pilot program with respect to the negotiations of contracts and rates by the department.

(j) An independent evaluation of the program shall be conducted and a report submitted to the Legislature and the director by January 1, 1988. The independent evaluation of the program commissioned by the federal Health Care Financing Administration may fulfill the purposes of this part. This evaluation and report shall include, but is not limited to, the following:

(1) An assessment of the cost of medical services as compared to the cost of the existing Medi-Cal fee-for-service delivery mode.

(2) An assessment of utilization levels of specialist and emergency services.

(3) An assessment of the quality of care.

(4) Recommendations for future policy on delivery of services.

SEC. 12. Section 14594 of the Welfare and Institutions Code is amended to read:

14594. Contracts under this chapter may be on a nonbid basis and shall be exempt from Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code.

CHAPTER 835

An act to amend Section 1367.10 of the Health and Safety Code, relating to health care coverage.

[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 1367.10 of the Health and Safety Code is amended to read:

1367.10. (a) Every health care service plan shall include within its disclosure form and within its evidence of coverage a statement clearly describing how participation in the plan may affect the choice of physician, hospital, or other health care providers, the basic method of reimbursement, including the scope and general methods of payment made to its contracting providers of health care services, and whether financial bonuses or any other incentives are used. The disclosure form and evidence of coverage shall indicate that if an enrollee wishes to know more about these issues, the enrollee may request additional information from the health care service plan, the enrollee's provider, or the provider's medical group or independent practice association regarding the information required pursuant to subdivision (b).

(b) If a plan, medical group, independent practice association, or participating health care provider uses or receives financial bonuses or any other incentives, the plan, medical group, independent practice association, or health care provider shall provide a written summary to any person who requests it that includes all of the following:

(1) A general description of the bonus and any other incentive arrangements used in its compensation agreements. Nothing in this section shall be construed to require disclosure of trade secrets or commercial or financial information that is privileged or confidential, such as payment rates, as determined by the commissioner, pursuant to state law.

(2) A description regarding whether, and in what manner, the bonuses and any other incentives are related to a provider's use of referral services.

(c) The statements and written information provided pursuant to subdivisions (a) and (b) shall be communicated in clear and simple language that enables consumers to evaluate and compare health care service plans.

(d) The plan shall clearly inform prospective enrollees that participation in that plan will affect the person's choice of provider by placing the following statement in a conspicuous place on all material required to be given to prospective enrollees including promotional and descriptive material, disclosure forms, and certificates and evidences of coverage:

PLEASE READ THE FOLLOWING INFORMATION SO YOU WILL KNOW FROM WHOM OR WHAT GROUP OF PROVIDERS HEALTH CARE MAY BE OBTAINED

It is not the intent of this section to require that the names of individual health care providers be enumerated to prospective enrollees.

If the health care service plan provides a list of providers to patients or contracting providers, the plan shall include within the provider listing a notification that enrollees may contact the plan in order to obtain a list of the facilities with which the health care service plan is contracting for subacute care and/or transitional inpatient care.

SEC. 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 836

An act to amend Sections 1386, 1388, 1391, 1392, and 1393 of the Health and Safety Code, relating to health care coverage.

[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 1386 of the Health and Safety Code is amended to read:

1386. (a) The commissioner may, after appropriate notice and opportunity for a hearing, by order, suspend or revoke any license issued under this chapter to a health care service plan or assess administrative penalties if the commissioner determines that the licensee has committed any of the acts or omissions constituting grounds for disciplinary action.

(b) The following acts or omissions constitute grounds for disciplinary action by the commissioner:

(1) The plan is operating at variance with the basic organizational documents as filed pursuant to Section 1351 or 1352, or with its

published plan, or in any manner contrary to that described in, and reasonably inferred from, the plan as contained in its application for licensure and annual report, or any modification thereof, unless amendments allowing the variation have been submitted to, and approved by, the commissioner.

(2) The plan has issued, or permits others to use, evidence of coverage or uses a schedule of charges for health care services which do not comply with those published in the latest evidence of coverage found unobjectionable by the commissioner.

(3) The health care service plan does not provide basic health care services to its enrollees and subscribers as set forth in the evidence of coverage. This subdivision shall not apply to specialized health care service plan contracts.

(4) The plan is no longer able to meet the standards set forth in Article 5 (commencing with Section 1367).

(5) The continued operation of the plan will constitute a substantial risk to its subscribers and enrollees.

(6) The plan has violated or attempted to violate, or conspired to violate, directly or indirectly, or assisted in or abetted a violation or conspiracy to violate any provision of this chapter, any rule or regulation adopted by the commissioner pursuant to this chapter, or any order issued by the commissioner pursuant to this chapter.

(7) The plan has engaged in any conduct that constitutes fraud or dishonest dealing or unfair competition, as defined by Section 17200 of the Business and Professions Code.

(8) The plan has permitted, or aided or abetted any violation by an employee or contractor who is a holder of any certificate, license, permit, registration or exemption issued pursuant to the Business and Professions Code, or the Health and Safety Code which would constitute grounds for discipline against the certificate, license, permit, registration, or exemption.

(9) The plan has aided or abetted or permitted the commission of any illegal act.

(10) The engagement of a person as an officer, director, employee, associate, or provider of the plan contrary to the provisions of an order issued by the commissioner pursuant to subdivision (c) of this section or subdivision (d) of Section 1388.

(11) The engagement of a person as a solicitor or supervisor of solicitation contrary to the provisions of an order issued by the commissioner pursuant to Section 1388.

(12) The plan, its management company, or any other affiliate of the plan, or any controlling person, officer, director, or other person occupying a principal management or supervisory position in the plan, management company or affiliate, has been convicted of or pleaded nolo contendere to a crime, or committed any act involving dishonesty, fraud, or deceit, which crime or act is substantially related to the qualifications, functions, or duties of a person engaged in business in accordance with this chapter. The commissioner may

revoke or deny a license hereunder irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(13) The plan violates Section 510, 2056, or 2056.1 of the Business and Professions Code.

(14) The plan has been subject to a final disciplinary action taken by this state, another state, an agency of the federal government, or another country, for any act or omission that would constitute a violation of this chapter.

(c) (1) The commissioner may prohibit any person from serving as an officer, director, employee, associate, or provider of any plan or solicitor firm, or of any management company of any plan, or as a solicitor, if either of the following applies:

(A) The prohibition is in the public interest and the person has committed, caused, participated in, or had knowledge of a violation of this chapter by a plan, management company, or solicitor firm.

(B) The person was an officer, director, employee, associate, or provider of a plan or of a management company or solicitor firm of any plan whose license has been suspended or revoked pursuant to this section and the person had knowledge of, or participated in, any of the prohibited acts for which the license was suspended or revoked.

(2) A proceeding for the issuance of an order under this subdivision may be included with a proceeding against a plan under this section or may constitute a separate proceeding, subject in either case to, subdivision (d).

(d) A proceeding under this section shall be subject to appropriate notice to, and the opportunity for a hearing with regard to, the person affected in accordance with subdivision (a) of Section 1397.

SEC. 2. Section 1388 of the Health and Safety Code is amended to read:

1388. (a) The commissioner may, after appropriate notice and opportunity for hearing, by order, censure a person acting as a solicitor or solicitor firm, or suspend for a period not exceeding 24 months or bar a person from operating as a solicitor or solicitor firm, or assess administrative penalties against a person acting as a solicitor or solicitor firm if the commissioner determines that the person has committed any of the acts or omissions constituting grounds for disciplinary action.

(b) The following acts or omissions constitute grounds for disciplinary action by the commissioner:

(1) The continued operation of the solicitor or solicitor firm in a manner that may constitute a substantial risk to a plan or subscribers and enrollees.

(2) The solicitor or solicitor firm has violated or attempted to violate, or conspired to violate, directly or indirectly, or assisted in or abetted a violation or conspiracy to violate any provision of this chapter, any rule or regulation adopted by the commissioner

pursuant to the chapter, or any order issued by the commissioner pursuant to this chapter.

(3) The solicitor or solicitor firm has engaged in any conduct that constitutes fraud or dishonest dealing or unfair competition, as defined by Section 17200 of the Business and Professions Code.

(4) The engagement of a person as an officer, director, employee, or associate of the solicitor firm contrary to the provisions of an order issued by the commissioner pursuant to subdivision (d) of this section or subdivision (c) of Section 1386.

(5) The solicitor or solicitor firm, or its management company, or any other affiliate of the solicitor firm, or any controlling person, officer, director, or other person occupying a principal management or supervisory position in that solicitor firm, management company, or affiliate, has been convicted or pleaded nolo contendere to a crime, or committed any act involving dishonesty, fraud, or deceit, which crime or act is substantially related to the qualifications, functions, or duties of a person engaged in business in accordance with the provisions of this chapter. The commissioner may issue an order hereunder irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(c) The commissioner shall notify plans of any order issued pursuant to subdivision (a) which suspends or bars a person from engaging in operations as a solicitor or solicitor firm. It shall be unlawful for any plan, after receipt of notice of the order, to receive any new subscribers or enrollees through that person or to otherwise utilize any solicitation services of that person in violation thereof.

(d) (1) The commissioner may prohibit any person from serving as an officer, director, employee, or associate of any plan or solicitor firm, or as a solicitor, if that person was an officer, director, employee, or associate of a solicitor firm that has been the subject of an order of suspension or bar from engaging in operations as a solicitor firm pursuant to this section and that person had knowledge of, or participated in, any of the prohibited acts for which the order was issued.

(2) A proceeding for the issuance of an order under this subdivision may be included with a proceeding against a solicitor firm under this section or may constitute a separate proceeding, subject in either case to subdivision (e).

(e) A proceeding for the issuance of an order under this section shall be subject to appropriate notice to, and the opportunity for a hearing with regard to, the person affected in accordance with subdivision (a) of Section 1397.

SEC. 3. Section 1391 of the Health and Safety Code is amended to read:

1391. (a) (1) The commissioner may issue an order directing a plan, solicitor firm, or any representative thereof, a solicitor, or any other person to cease and desist from engaging in any act or practice in violation of the provisions of this chapter, any rule adopted

pursuant to this chapter, or any order issued by the commissioner pursuant to this chapter.

(2) If the plan, solicitor firm, or any representative thereof, or solicitor, or any other person fails to file a written request for a hearing within one year from the date of service of the order, the order shall be deemed a final order of the commissioner and shall not be subject to review by any court or agency, notwithstanding subdivision (b) of Section 1397.

(b) If a timely request for a hearing is made by a licensed plan, the request shall automatically stay the effect of the order only to the extent that the order requires the cessation of operation of the plan or prohibits acceptance of new members by the plan or both. However, no automatic stay shall be issued if any examination or inspection of the plan performed by the commissioner discloses, or reports or documents submitted to the commissioner by the plan on their face show, that the plan is in violation of any fiscal requirement of this chapter or in violation of any requirement of Section 1384 or 1385. In the event of an automatic stay, only that portion of the order requiring cessation of operation or prohibiting enrollment shall be stayed and all other portions of the order shall remain effective. If a hearing is held, and a finding is made that the health or safety of the members and potential members of the plan might be adversely affected by its continued operation, the stay shall be terminated. This finding shall be made, if at all, not later than 30 days after the date of the hearing.

(c) If a timely request for a hearing is made by an unlicensed plan, the commissioner may stay the effect of the order to the extent that the order requires the cessation of operation of the plan or prohibits acceptance of new members by the plan, for that period and subject to those conditions that the commissioner may require, upon a determination by the commissioner that the action would be in the public interest.

SEC. 4. Section 1392 of the Health and Safety Code is amended to read:

1392. (a) (1) Whenever it appears to the commissioner that any person has engaged, or is about to engage, in any act or practice constituting a violation of any provision of this chapter, any rule adopted pursuant to this chapter, or any order issued pursuant to this chapter, the commissioner may bring an action in superior court, or the commissioner may request the Attorney General to bring an action to enjoin these acts or practices or to enforce compliance with this chapter, any rule or regulation adopted by the commissioner pursuant to this chapter, or any order issued by the commissioner pursuant to this chapter, or to obtain any other equitable relief.

(2) If the commissioner determines that it is in the public interest, the commissioner may include in any action authorized by paragraph (1) a claim for any ancillary or equitable relief and the court shall have jurisdiction to award this additional relief.

(3) Upon a proper showing, a permanent or preliminary injunction, restraining order, writ of mandate, or other relief shall be granted, and a receiver, monitor, conservator, or other designated fiduciary or officer of the court may be appointed for the defendant or the defendant's assets.

(b) A receiver, monitor, conservator, or other designated fiduciary, or officer of the court appointed by the superior court pursuant to this section may, with the approval of the court, exercise any or all of the powers of the defendant's officers, directors, partners, or trustees, or any other person who exercises similar powers and performs similar duties, including the filing of a petition for bankruptcy. No action at law or in equity may be maintained by any party against the commissioner, or a receiver, monitor, conservator, or other designated fiduciary or officer of the court by reason of their exercising these powers or performing these duties pursuant to the order of, or with the approval of, the superior court.

SEC. 5. Section 1393 of the Health and Safety Code is amended to read:

1393. (a) The superior court of the county in which is located the principal office of the plan in this state shall, upon the filing by the commissioner of a verified application showing any of the conditions enumerated in Section 1386 to exist, issue its order vesting title to all of the assets of the plan, wherever situated, in the commissioner or the commissioner's successor in office, in his or her official capacity as such, and direct the commissioner to take possession of all of its books, records, property, real and personal, and assets, and to conduct, as conservator, the business or portion of the business of the person as may seem appropriate to the commissioner, and enjoining the person and its officers, directors, agents, servants, and employees from the transaction of its business or disposition of its property until the further order of the court.

(b) Whenever it appears to the commissioner that irreparable loss and injury to the property and business of the plan or to the plan's enrollees has occurred or may occur unless the commissioner acts immediately, the commissioner, without notice and before applying to the court for any order, may take possession of the property, business, books, records, and accounts of the plan, and of the offices and premises occupied by it for the transaction of its business, and retain possession until returned to the plan or until further order of the commissioner or subject to an order of the court. Any person having possession of and refusing to deliver any of the books, records, or assets of a plan against which a seizure order has been issued by the commissioner, shall be guilty of a misdemeanor and punishable by a fine not exceeding ten thousand dollars ($10,000) or imprisonment not exceeding one year, or both the fine and imprisonment. Whenever the commissioner has taken possession of any plan pursuant to this subdivision, the owners, officers, and directors of the plan may apply to the superior court in the county

in which the principal office of the plan is located, within 10 days after the taking, to enjoin further proceedings. The court, after citing the commissioner to show cause why further proceedings should not be enjoined, and after a hearing and a determination of the facts upon the merits, may do any of the following:

(1) Dismiss the application after confirming the commissioner's authority to take possession of all of the plan's books, records, property, real and personal, and assets, and to conduct, as conservator, the business or portion of the business as the commissioner may deem appropriate, and enjoining the owners, officers, and directors, and their agents and employees, from the transaction of plan business or disposition of plan property until the further order of the court.

(2) Enjoin the commissioner from further proceedings and direct the commissioner to surrender the property and business to the plan.

(3) Make any further order as may be just.

(c) If any facts occur that would entitle the commissioner to take possession of the property, business, and assets of the plan, the commissioner may appoint a conservator over the plan and require any bond of the conservator as the commissioner deems proper. The conservator, under the direction of the commissioner, shall take possession of the property, business, and assets of the plan pending further disposition of its business. The conservator shall retain possession until the property, business, and assets of the plan are returned to the plan, or until further order of the commissioner, except that the conservator shall be able to pay necessary costs of the ongoing operation without formal order of the commissioner. Whenever the commissioner has taken possession of any plan pursuant to subdivision (b), the commissioner shall, within 10 days after the taking, apply to the superior court in the county in which the principal office of the plan is located for an order confirming the commissioner's appointment of the conservator. The order may be given after a hearing upon notice that the court prescribes.

(d) (1) Subject to the other provisions of this section, a conservator, while in possession of the property, business, and assets of a plan, has the same powers and rights, and is subject to the same duties and obligations, as the commissioner under the same circumstances, and during this time, the rights of a plan and of all persons with respect to the plan are the same as if the commissioner had taken possession of the property, business, and assets of the plan, for the purpose of carrying out the conservatorship.

(2) Subject to the other provisions of this section, a conservator, while in possession of the property, business, and assets of a plan, shall have all of the rights, powers, and privileges of the plan, and its officers and directors, for the purpose of carrying out the conservatorship. All expenses of any conservatorship shall be paid from the assets of the plan, and shall be a lien on the plan which shall be prior to any other lien.

(3) No action at law or in equity may be maintained by any party against the commissioner or a conservator by reason of their exercising or performing the privileges, powers, rights, duties, and obligations pursuant to the order, or with the approval, of the superior court.

(e) Upon appointing a conservator, the commissioner shall cause to be made and completed, at the earliest possible date, an examination of the affairs of the plan as shall be necessary to inform the commissioner as to the plan's financial condition.

(f) If the commissioner becomes satisfied that it may be done safely and in the public interest, the commissioner may terminate the conservatorship and permit the plan for which the conservator was appointed to resume its business under the direction of its board of directors, subject to any terms, conditions, restrictions, and limitations the commissioner prescribes.

CHAPTER 837

An act to add Section 1348 to the Health and Safety Code, relating to insurance.

[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 1348 is added to the Health and Safety Code, to read:

1348. (a) Every health care service plan licensed to do business in this state shall establish an antifraud plan. The purpose of the antifraud plan shall be to organize and implement an antifraud strategy to identify and reduce costs to the plans, providers, subscribers, enrollees, and others caused by fraudulent activities, and to protect consumers in the delivery of health care services through the timely detection, investigation, and prosecution of suspected fraud. The antifraud plan elements shall include, but not be limited to, all of the following: the designation of, or a contract with, individuals with specific investigative expertise in the management of fraud investigations; training of plan personnel and contractors concerning the detection of health care fraud; the plan's procedure for managing incidents of suspected fraud; and the internal procedure for referring suspected fraud to the appropriate government agency.

(b) Every plan shall submit its antifraud plan to the department no later than July 1, 1999. Any changes shall be filed with the department pursuant to Section 1352. The submission shall describe the manner in which the plan is complying with subdivision (a), and

the name and telephone number of the contact person to whom inquiries concerning the antifraud plan may be directed.

(c) Every health care service plan that establishes an antifraud plan pursuant to subdivision (a) shall provide to the commissioner an annual written report describing the plan's efforts to deter, detect, and investigate fraud, and to report cases of fraud to a law enforcement agency. For those cases that are reported to law enforcement agencies by the plan, this report shall include the number of cases prosecuted to the extent known by the plan. This report may also include recommendations by the plan to improve efforts to combat health care fraud.

(d) Nothing in this section shall be construed to limit the commissioner's authority to implement this section in accordance with Section 1344.

(e) For purposes of this section, "fraud" includes, but is not limited to, knowingly making or causing to be made any false or fraudulent claim for payment of a health care benefit.

(f) Nothing in this section shall be construed to limit any civil, criminal, or administrative liability under 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 838

An act to add Section 1373.21 to the Health and Safety Code, relating to health care coverage.

[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 1373.21 is added to the Health and Safety Code, to read:

1373.21. (a) If a health care service plan uses arbitration to settle disputes with enrollees or subscribers, it shall require that an arbitration award be accompanied by a written decision to the parties

that indicates the prevailing party, the amount of any award and other relevant terms of the award, and the reasons for the award rendered.

(b) A copy of any modified written decision, including the amount of the award and other relevant terms of the award, the reasons for the award rendered, the name of the arbitrator or arbitrators, but excluding the names of the enrollee, the plan, witnesses, attorneys, providers, health plan employees, and health facilities, shall be provided to the department on a quarterly basis. The department shall make these modified decisions available to the public upon request.

(c) Subdivision (b) shall not preclude the department from requesting and securing from any plan copies of complete arbitration decisions issued pursuant to subdivision (a) for the purposes of administering this chapter.

(d) If the department receives a request for information about an arbitration decision obtained by the department pursuant to subdivision (b) or (c), the department shall not release information identifying a person or entity whose name has been or should have been removed from the arbitration decision pursuant to subdivision (b).

(e) Nothing in this section shall be construed to preclude the department, or any plan or person, from disclosing information contained in an arbitration decision if the disclosure is otherwise permitted by law.

CHAPTER 839

An act to add Section 1367.64 to the Health and Safety Code, and to add Section 10123.83 to the Insurance Code, relating to health care coverage.

[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 1367.64 is added to the Health and Safety Code, to read:

1367.64. (a) Every individual or group health care service plan contract, except for a specialized health care service plan contract, that is issued, amended, or renewed on or after January 1, 1999, shall be deemed to provide coverage for the screening and diagnosis of prostate cancer, including, but not limited to, prostate-specific antigen testing and digital rectal examinations, when medically necessary and consistent with good professional practice.

(b) Nothing in this section shall be construed to establish a new mandated benefit or to prevent application of deductible or copayment provisions in a policy or plan, nor shall this section be construed to require that a policy or plan be extended to cover any other procedures under an individual or a group health care service plan contract. Nothing in this section shall be construed to authorize an enrollee to receive the services required to be covered by this section if those services are furnished by a nonparticipating provider, unless the enrollee is referred to that provider by a participating physician or nurse practitioner providing care.

SEC. 2. Section 10123.83 is added to the Insurance Code, to read:

10123.83. (a) Every individual or group policy of disability insurance that covers hospital, medical, or surgical benefits that is issued, amended, or renewed on or after January 1, 1999, shall be deemed to provide coverage for the screening and diagnosis of prostate cancer, including, but not limited to, prostate-specific antigen testing and digital rectal examinations, when medically necessary and consistent with good professional practice.

(b) Nothing in this section shall be construed to require an individual or group policy to cover the surgical and other procedures known as radical prostatectomy, external beam radiation therapy, radiation seed implants, and combined hormonal therapy, or to prevent application of deductible or copayment provisions contained in the policy, nor shall this section be construed to require that coverage under an individual or group policy be extended to any other procedures.

(c) This section shall not apply to specified accident, specified disease, hospital indemnity, Medicare supplement, or long-term care health insurance policies.

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 840

An act to amend Sections 44237, 44332.6, 44830.1, 44836, 45125, and 45125.1 of, and to add Sections 33192, 33193, 44830.2, 45125.01, and

45125.2 to, the Education Code, relating to school employees, 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. Section 33192 is added to the Education Code, to read:

33192. (a) Except as provided in subdivisions (b) and (c), if the employees of any entity that has a contract with a private school to provide any of the following services may have any contact with pupils, those employees shall submit or have submitted their fingerprints in a manner authorized by the Department of Justice together with a fee determined by the Department of Justice to be sufficient to reimburse the department for its costs incurred in processing the application:

(1) School and classroom janitorial.
(2) Schoolsite administrative.
(3) Schoolsite grounds and landscape maintenance.
(4) Pupil transportation.
(5) Schoolsite food-related.

(b) This section shall not apply to an entity providing any of the services listed in subdivision (a) to a private school in an emergency or exceptional situation, such as when pupil health or safety is endangered or when repairs are needed to make school facilities safe and habitable.

(c) This section shall not apply to an entity providing any of the services listed in subdivision (a) to a private school when the private school determines that the employees of the entity will have limited contact with pupils. In determining whether a contract employee has limited contact with pupils, the private school shall consider the totality of the circumstances, including factors such as the length of time the contractors will be on school grounds, whether pupils will be in proximity with the site where the contractors will be working, and whether the contractors will be working by themselves or with others. If a private school has made this determination, the private school shall take appropriate steps to protect the safety of any pupils that may come in contact with these employees.

(d) A private school may determine, on a case-by-case basis, to require an entity providing schoolsite services other than those listed in subdivision (a) or those described in Section 33193 and the entity's employees to comply with the requirements of this section, unless the private school determines that the employees of the entity will have limited contact with pupils. In determining whether a contract employee will have limited contact with pupils, the private school shall consider the totality of the circumstances, including factors such

as the length of time the contractors will be on school grounds, whether pupils will be in proximity with the site where the contractors will be working, and whether the contractors will be working by themselves or with others. If a private school makes this determination, the private school shall take appropriate steps to protect the safety of any pupils that may come in contact with these employees. If a private school requires an entity providing services other than those listed in subdivision (a) and its employees to comply with the requirements of this section, the Department of Justice shall comply with subdivision (e).

(e) (1) The Department of Justice shall ascertain whether the individual whose fingerprints were submitted to it pursuant to subdivision (a) has been arrested or convicted of any crime insofar as that fact can be ascertained from information available to the department. Upon implementation of an electronic fingerprinting system with terminals located statewide and managed by the Department of Justice, the department shall ascertain the information required pursuant to this section within three working days. When the Department of Justice ascertains that an individual whose fingerprints were submitted to it pursuant to subdivision (a) has a pending criminal proceeding for a felony as defined in Section 45122.1 or has been convicted of a felony as defined in Section 45122.1, the department shall notify the employer designated by the individual of that fact. The notification shall be delivered by telephone or electronic mail to the employer.

(2) The Department of Justice, at its discretion, may notify the private school in instances when the employee is defined as having a pending criminal proceeding described in Section 45122.1 or has been convicted of a felony as defined in Section 45122.1.

(3) The Department of Justice may forward one copy of the fingerprints to the Federal Bureau of Investigation to verify any record of previous arrests or convictions of the applicant. The Department of Justice shall review the criminal record summary it obtains from the Federal Bureau of Investigation and shall notify the employer only as to whether or not an applicant has any convictions or arrests pending adjudication for offenses which, if committed in California, would have been punishable as a violent or serious felony. The Department of Justice shall not provide any specific offense information received from the Federal Bureau of Investigation. The Department of Justice shall provide written notification to the contract employer only concerning whether an applicant for employment has any conviction or arrest pending final adjudication for any of those crimes, as specified in Section 45122.1, but shall not provide any information identifying any offense for which an existing employee was convicted or has an arrest pending final adjudication.

(f) An entity having a contract as specified in subdivision (a) and an entity required to comply with this section pursuant to subdivision (d) shall not permit an employee to come in contact with pupils until

the Department of Justice has ascertained that the employee has not been convicted of a felony as defined in Section 45122.1.

(1) This prohibition does not apply to an employee solely on the basis that the employee has been convicted of a felony if the employee 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.

(2) This prohibition does not apply to an employee solely on the basis that the employee has been convicted of a serious felony that is not also a violent felony if that employee 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 schoolsite 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 having jurisdiction where he or she is resident.

(g) An entity having a contract as specified in subdivision (a) and an entity required to comply with this section pursuant to subdivision (d) shall certify in writing to the private school that neither the employer nor any of its employees who are required by this section to submit or have their fingerprints submitted to the Department of Justice and who may come in contact with pupils have been convicted of a felony as defined in Section 45122.1.

(h) An entity having a contract as specified in subdivision (a) on the effective date of the act adding this section and an entity required to comply with this section pursuant to subdivision (d) by a private school with which it has a contract on the effective date of the act adding this section shall complete the requirements of this section within 90 days of that date.

(i) For purposes of this section, "private school" means a person, firm, association, partnership, or corporation offering or conducting private school instruction on the elementary or high school level.

(j) Where reasonable access to the statewide electronic fingerprinting network is available, the Department of Justice may request electronic submission of the fingerprint cards and other information required by this section.

SEC. 2. Section 33193 is added to the Education Code, to read:

33193. (a) A private school contracting with an entity for the construction, reconstruction, rehabilitation, or repair of a school facility where the employees of the entity will have contact, other than limited contact, with pupils shall ensure the safety of the pupils by one or more of the following methods:

(1) The installation of a physical barrier at the worksite to limit contact with pupils.

(2) Continual supervision and monitoring of all employees of the entity by an employee of the entity whom the Department of Justice has ascertained has not been convicted of a violent or serious felony. For purposes of this paragraph, an employee of the entity may submit

his or her fingerprints to the Department of Justice pursuant to subdivision (a) of Section 33192 and the department shall comply with subdivision (d) of Section 33192.

(3) Surveillance of employees of the entity by school personnel.

(b) An entity that contracts with a private school for the construction, reconstruction, rehabilitation, or repair of a school facility is not required to comply with the requirements of Section 33192 if one or more of the methods described in subdivision (a) is utilized.

(c) This section shall not apply to an entity providing construction, reconstruction, rehabilitation, or repair services to a school district in an emergency or exceptional situation, such as when pupil health or safety is endangered or when repairs are needed to make school facilities safe and habitable.

(d) (1) For purposes of this section, "private school" means a person, firm, association, partnership, or corporation offering or conducting private school instruction on the elementary or high school level.

(2) 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.

SEC. 3. 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.

(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) 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.

(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. 4. 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 use 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 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 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. 5. Section 44332.6 of the Education Code is amended to read:

44332.6. (a) (1) Before issuing a temporary certificate pursuant to Section 44332, a county or city and county board of education shall obtain a criminal record summary about the applicant from the Department of Justice and shall not issue a temporary certificate if the applicant has been convicted of a violent or serious felony.

(2) Before issuing a temporary certificate of clearance pursuant to Section 44332.5, a school district shall obtain a criminal record summary about the applicant from the Department of Justice and shall not issue a temporary certificate of clearance if the applicant has been convicted of a violent or serious felony.

(b) This section applies to any violent or serious offense which, if committed in this state would have been punishable as a violent or serious felony.

(c) For purposes of this section, a violent felony is any felony listed in subdivision (c) of Section 667.5 of the Penal Code and a serious felony is any felony listed in subdivision (c) of Section 1192.7 of the Penal Code.

(d) Notwithstanding subdivision (a), a person shall not be denied a temporary certificate or a temporary certificate of clearance solely on the basis that he or she has been convicted of a violent or serious felony if the person has obtained a certificate of rehabilitation and pardon pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code.

(e) Notwithstanding subdivision (a), a person shall not be denied a temporary certificate or a temporary certificate of clearance solely on the basis that the person has been convicted of a serious felony that is not also a violent felony, if that person can prove to the sentencing court of the offense in question, by clear and convincing evidence, that he or she has been rehabilitated for the purposes of school employment for at least one year. If the offense in question occurred outside this state, then the person may seek a finding of rehabilitation from the court in the school district in which he or she is a resident.

(f) (1) Notwithstanding paragraph (1) of subdivision (a), a county or city and county board of education may issue a temporary certificate to an employee currently and continuously employed by a school district within the county who is serving under a valid credential and has applied for a renewal of that credential or for an additional credential without obtaining a criminal record summary for that employee.

(2) Notwithstanding paragraph (2) of subdivision (a), a county or city and county board of education may issue a temporary certificate of clearance to an employee currently and continuously employed by a school district within the county who is serving under a valid credential and has applied for a renewal of that credential or for an additional credential without obtaining a criminal record summary for that employee.

SEC. 6. Section 44830.1 of the Education Code is amended to read:

44830.1. (a) In addition to any other prohibition or provision, no person who has been convicted of a violent or serious felony shall be hired by a school district in a position requiring certification qualifications or supervising positions requiring certification qualifications. A school district shall not retain in employment a current certificated employee who has been convicted of a violent or serious felony, and who is a temporary employee, a substitute employee, or a probationary employee serving before March 15 of the employee's second probationary year. If any conviction is reversed and the formerly convicted person is acquitted of the offense in a new trial, or the charges are dismissed, this section does not prohibit his or her employment thereafter.

(b) This section applies to any violent or serious offense which, if committed in this state, would have been punishable as a violent or serious felony.

(c) (1) For purposes of this section, a violent felony is any felony listed in subdivision (c) of Section 667.5 of the Penal Code and a serious felony is any felony listed in subdivision (c) of Section 1192.7 of the Penal Code.

(2) For purposes of this section, a plea of nolo contendere to a serious or violent felony constitutes a conviction.

(3) For purposes of this section, the term "school district" has the same meaning as defined in Section 41302.5.

(d) When the governing board of any school district requests a criminal record summary of a temporary, substitute, or probationary certificated employee, two fingerprint cards, bearing the legible rolled and flat impressions of the person's fingerprints together with a personal description and the fee, shall be submitted, by any means authorized by the Department of Justice, to the Department of Justice.

(e) When the Department of Justice ascertains that an individual who is an applicant for employment by a school district has been convicted of a violent or serious felony, or for purposes of implementing the prohibitions set forth in Section 44836, any sex offense, as defined in Section 44010, or any controlled substance offense, as defined in Section 44011, the department shall notify the school district of the criminal information pertaining to the applicant. The notification shall be delivered by telephone or electronic mail to the school district. The notification to the school district shall cease to be made once the statewide electronic fingerprinting network is returning responses within three working days. The Department of Justice shall send by first-class mail or electronic mail a copy of the criminal information to the Commission on Teacher Credentialing. The Department of Justice may charge a reasonable fee to cover the costs associated with processing, reviewing, and supplying the criminal record summary required by this section. In no event shall the fee exceed the actual costs incurred by the department.

(f) Notwithstanding subdivision (a), a person shall not be denied employment or terminated from employment solely on the basis that the person has been convicted of a violent or serious felony if the person has obtained a certificate of rehabilitation and pardon pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code.

(g) Notwithstanding subdivision (f), a person shall not be denied employment or terminated from employment solely on the basis that the person has been convicted of a serious felony that is not also a violent felony if that person can prove to the sentencing court of the offense in question, by clear and convincing evidence, that he or she has been rehabilitated for the purposes of school employment for at least one year. If the offense in question occurred outside this state, then the person may seek a finding of rehabilitation from the court in the school district in which he or she is a resident.

(h) Notwithstanding any other provision of law, when the Department of Justice notifies a school district by telephone or electronic mail that a current temporary employee, substitute employee, or probationary employee serving before March 15 of the employee's second probationary year, has been convicted of a violent or serious felony, that employee shall immediately be placed on leave without pay. When the school district receives written electronic notification of the fact of conviction from the Department of Justice, the employee shall be terminated automatically and without regard to any other procedure for termination specified in this code or school district procedures unless the employee challenges the record of the Department of Justice and the Department of Justice withdraws in writing its notification to the school district. Upon receipt of written withdrawal of notification from the Department of Justice, the employee shall immediately be reinstated with full restoration of salary and benefits for the period of time from the suspension without pay to the reinstatement.

(i) An employer shall request subsequent arrest service from the Department of Justice as provided under Section 11105.2 of the Penal Code.

(j) Notwithstanding Section 47610, this section applies to a charter school.

(k) This section shall not apply to a certificated employee who applies to renew his or her credential when both of the following conditions have been met:

(1) The employee's original application for credential was accompanied by that person's fingerprints.

(2) The employee has either been continuously employed in one or more public school districts since the issuance or last renewal of his or her credential or his or her credential has not expired between renewals.

(*l*) Nothing in this section shall prohibit a county superintendent of schools from issuing a temporary certificate to any person described in paragraph (1) or (2) of subdivision (k).

(m) This section shall not prohibit a school district from hiring a certificated employee who became a permanent employee of another school district as of October 1, 1997.

(n) All information obtained from the Department of Justice is confidential. Every agency handling Department of Justice information shall ensure the following:

(1) No recipient may 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. 7. Section 44830.2 is added to the Education Code, to read:

44830.2. (a) For situations in which a person is an applicant for employment, or is employed on a part-time or substitute basis, in a position requiring certification qualifications in multiple school districts within a county or within contiguous counties, the districts may agree among themselves to designate a single district, or a county superintendent may agree to act on behalf of participating districts within the county or contiguous counties, for the purposes of performing the following functions:

(1) Sending fingerprints to the Department of Justice.

(2) Receiving reports of convictions of serious and violent felonies.

(3) Reviewing criminal history records and reports of subsequent arrests from the Department of Justice.

(4) Maintaining common lists of persons eligible for employment.

(b) The school district or county superintendent serving in the capacity authorized in subdivision (a) shall be considered the employer for purposes of subdivisions (a), (d), and (g) of Section 44830.1.

(c) Upon receipt from the Department of Justice of a report of conviction of a serious or violent felony, the designated school district or county superintendent shall communicate that fact to the participating districts and remove the affected employee from the common list of persons eligible for employment.

(d) Upon receipt from the Department of Justice of a criminal history record or report of subsequent arrest for any person on a common list of persons eligible for employment, the designated school district or county superintendent shall give notice to the superintendent of any participating district or a person designated in writing by that superintendent, that the report is available for inspection on a confidential basis by the superintendent or authorized designee, at the office of the designated school district or county superintendent, for a period of 30 days following receipt of notice, to enable the employing school district to determine whether the employee meets that district's criteria for continued employment. The designated school district or county superintendent shall not release a copy of that information to any participating district or any other person, shall retain or dispose of the information in the manner required by law after all participating districts have had an opportunity to inspect it in accordance with this section, and shall maintain a record of all persons to whom the information has been shown that shall be available to the Department of Justice to monitor compliance with the requirements of confidentiality contained in this section.

(e) Any agency processing Department of Justice responses pursuant to this section shall submit an interagency agreement to the Department of Justice to establish authorization to submit and receive information pursuant to this section.

(f) All information obtained from the Department of Justice is confidential. Every agency handling Department of Justice information shall ensure the following:

(1) No recipient may 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. 8. Section 44836 of the Education Code is amended to read:

44836. (a) (1) The governing board of a school district shall not employ or retain in employment persons in public school service who have been convicted, or who have been convicted following a plea of nolo contendere to charges, of any sex offense as defined in Section 44010.

(2) If a person's conviction of a sex offense as defined in Section 44010 is reversed and the person is acquitted of the offense in a new trial or the charges against him or her are dismissed, this section does not prohibit his or her employment thereafter. If the dismissal was pursuant to Section 1203.4 of the Penal Code and the victim of the sex offense was a minor, this section does prohibit the person's employment.

(b) (1) The governing board of a school district also shall not employ or retain in employment persons in public school service who have been convicted of any controlled substance offense as defined in Section 44011.

(2) If a person's conviction for a controlled substance offense as defined in Section 44011 is reversed and the person is acquitted of the offense in a new trial or the charges against him or her are dismissed, this section does not prohibit his or her employment thereafter.

(c) Notwithstanding subdivision (b), the governing board of a school district may employ a person convicted of a controlled substance offense in a position requiring certification qualifications if that person holds an appropriate credential issued by the Commission on Teacher Credentialing.

SEC. 9. Section 45125 of the Education Code is amended to read:

45125. (a) (1) Except as provided in Section 45125.01, the governing board of any school district shall require each person to be employed in a position not requiring certification qualifications, except a secondary school pupil employed in a temporary or part-time position by the governing board of the school district having jurisdiction over the school attended by the pupil, to have two fingerprint cards bearing the legible rolled and flat impressions of the person's fingerprints together with a personal description of the applicant prepared by a local public law enforcement agency having jurisdiction in the area of the school district, which agency shall transmit the cards, together with the fee required by subdivision (f), to the Department of Justice; except that any district, or districts with a common board, may process the fingerprint cards if the district so elects.

(2) As used in this section, "local public law enforcement agency" includes any school district and as used in Section 45126 requires the Department of Justice to provide to any school district, upon application, information pertaining only to applicants for employment by the district, including applicants who are employees of another district.

(b) (1) Upon receiving the fingerprint 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 employing agency submitting the applicant's fingerprints no more than 15 working days after receiving the fingerprint cards. The Department of Justice shall not forward

records of criminal proceedings that did not result in a conviction but shall forward information on arrests pending adjudication.

(2) Upon implementation of an electronic fingerprinting system with terminals located statewide and managed by the Department of Justice, the Department of Justice shall ascertain the information required pursuant to this subdivision within three working days. If the Department of Justice cannot ascertain the information required pursuant to this subdivision within three working days, the department shall notify the school district that it cannot so ascertain the required information. This notification shall be delivered by telephone or electronic mail to the school district. If a school district is notified by the Department of Justice that it cannot ascertain the required information about a person, the school district may not employ that person until the Department of Justice ascertains that information.

(3) In the case of a person to be employed in a position not requiring certification qualifications who is described in subparagraph (A) or (B), the school district shall request the Department of Justice to forward one copy of the fingerprint cards to the Federal Bureau of Investigation for the purpose of obtaining any record of previous convictions of the applicant.

(A) The person has not resided in the State of California for at least one year immediately preceding the person's application for employment.

(B) The person has resided for more than one year, but less than seven years, in the State of California and the Department of Justice has ascertained that the person was convicted of a sex offense where the victim was a minor or a drug offense where an element of the offense is either the distribution to, or the use of a controlled substance by, a minor.

(c) The governing board of a school district 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 and Sections 45125.5 and 45126, except that this subdivision does not apply to secondary school pupils who are to be employed in a temporary or part-time position by the governing board of the school district having jurisdiction over the school they attend.

(d) The governing board of each district shall maintain a list indicating the number of current employees, except secondary school pupils employed in a temporary or part-time position by the governing board of the school district having jurisdiction over the school they attend, who have not completed the requirements of this section. The Department of Justice shall process these cards within 30 working days of their receipt and any cards in its possession on the date of the amendment of this section by Assembly Bill 1610 of the 1997–98 Regular Session within 30 working days of that date. School districts that have previously submitted identification cards for current employees to either the Department of Justice or the Federal

Bureau of Investigation shall not be required to further implement the provisions of this section as it applies to those employees.

(e) A plea or verdict of guilty or a finding of guilt by a court in a trial without a jury or forfeiture of bail is deemed to be a conviction within the meaning of this section, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing the withdrawal of the plea of guilty and entering of a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusations or information.

(f) (1) The school district shall provide the means whereby the fingerprint cards may be completed and may charge a fee determined by the Department of Justice to be sufficient to reimburse the department for the costs incurred in processing the application. The amount of the fee shall be forwarded to the Department of Justice with the required copies of applicant's fingerprint cards. The governing board may collect a reasonable fee payable to the local public law enforcement agency taking the fingerprints and completing the data on the fingerprint cards. In no event shall the fee exceed the actual costs incurred by the agency.

(2) The additional fees shall be transmitted to the city or county treasury. If an applicant is subsequently hired by the board within 30 days of the application, the fee may be reimbursed to the applicant. Funds not reimbursed to applicants shall be credited to the general fund of the district. If the fingerprint cards forwarded to the Department of Justice are those of a person already in the employ of the governing board, the district shall pay the fee required by this section, which fee shall be a proper charge against the general fund of the district, and no fee shall be charged the employee.

(g) This section applies to substitute and temporary employees regardless of length of employment.

(h) Subdivision (c) of this section shall not apply to a person to be employed if a school district determines that an emergency or an exceptional situation exists, and that a delay in filling the position in which the person would be employed would endanger pupil health or safety.

(i) 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.

(j) A school district shall request subsequent arrest service from the Department of Justice as provided under Section 11105.2 of the Penal Code.

(k) All information obtained from the Department of Justice is confidential. Each agency handling Department of Justice information shall ensure the following:

(1) No recipient may 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. 10. Section 45125.01 is added to the Education Code, to read:

45125.01. (a) For situations in which a person is an applicant for employment, or is employed on a part-time or substitute basis, in a position not requiring certification qualifications in multiple school districts within a county or within contiguous counties, the districts may agree among themselves to designate a single district, or a county superintendent may agree to act on behalf of participating districts within the county or contiguous counties, for the purposes of performing the following duties:

(1) Sending fingerprints to the Department of Justice.

(2) Receiving reports of convictions of serious and violent felonies, criminal history records and reports of subsequent arrests from the Department of Justice.

(3) Maintaining common lists of persons eligible for employment.

(b) The school district or county superintendent serving in the capacity authorized in subdivision (a) shall be considered the employer for purposes of subdivisions (a) and (f) of Section 45125.

(c) Upon receipt from the Department of Justice of a report of conviction of a serious or violent felony, the designated school district or county superintendent shall communicate that fact to the participating districts and remove the affected employee from the common list of persons eligible for employment.

(d) Upon receipt from the Department of Justice of a criminal history record or report of subsequent arrest for any person on a common list of persons eligible for employment, the designated school district or county superintendent shall give notice to the superintendent of any participating district or a person designated in writing by that superintendent, that the report is available for inspection on a confidential basis by the superintendent or authorized designee, at the office of the designated school district or county superintendent, for a period of 30 days following receipt of notice to enable the employing school district to determine whether the employee meets that district's criteria for continued employment. The designated school district or county superintendent shall not release a copy of that information to any

participating district or any other person, shall retain or dispose of the information in the manner required by law after all participating districts have had an opportunity to inspect it in accordance with this section, and shall maintain a record of all persons to whom the information has been shown that shall be available to the Department of Justice to monitor compliance with the requirements of confidentiality contained in this section.

(e) Any agency processing Department of Justice responses pursuant to this section shall submit an interagency agreement to the Department of Justice to establish authorization to submit and receive information pursuant to this section.

(f) All information obtained from the Department of Justice is confidential. Every agency handling Department of Justice information shall ensure the following:

(1) No recipient may 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. 11. Section 45125.1 of the Education Code is amended to read:

45125.1. (a) Except as provided in subdivisions (b) and (c), if the employees of any entity that has a contract with a school district, as defined in Section 41302.5, to provide any of the following services may have any contact with pupils, those employees shall submit or have submitted their fingerprints in a manner authorized by the Department of Justice together with a fee determined by the Department of Justice to be sufficient to reimburse the department for its costs incurred in processing the application:

(1) School and classroom janitorial.

(2) Schoolsite administrative.

(3) Schoolsite grounds and landscape maintenance.

(4) Pupil transportation.

(5) Schoolsite food-related.

(b) This section shall not apply to an entity providing any of the services listed in subdivision (a) to a school district in an emergency or exceptional situation, such as when pupil health or safety is

endangered or when repairs are needed to make school facilities safe and habitable.

(c) This section shall not apply to an entity providing any of the services listed in subdivision (a) to a school district when the school district determines that the employees of the entity will have limited contact with pupils. In determining whether a contract employee has limited contact with pupils, the school district shall consider the totality of the circumstances, including factors such as the length of time the contractors will be on school grounds, whether pupils will be in proximity with the site where the contractors will be working, and whether the contractors will be working by themselves or with others. If a school district has made this determination, the school district shall take appropriate steps to protect the safety of any pupils that may come in contact with these employees.

(d) A school district may determine, on a case-by-case basis, to require an entity providing schoolsite services other than those listed in subdivision (a) or those described in Section 45125.2 and the entity's employees to comply with the requirements of this section, unless the school district determines that the employees of the entity will have limited contact with pupils. In determining whether a contract employee will have limited contact with pupils, the school district shall consider the totality of the circumstances, including factors such as the length of time the contractors will be on school grounds, whether pupils will be in proximity with the site where the contractors will be working, and whether the contractors will be working by themselves or with others. If a school district makes this determination, the school district shall take appropriate steps to protect the safety of any pupils that may come in contact with these employees. If a school district requires an entity providing services other than those listed in subdivision (a) and its employees to comply with the requirements of this section, the Department of Justice shall comply with subdivision.

(e) (1) The Department of Justice shall ascertain whether the individual whose fingerprints were submitted to it pursuant to subdivision (a) has been arrested or convicted of any crime insofar as that fact can be ascertained from information available to the department. Upon implementation of an electronic fingerprinting system with terminals located statewide and managed by the Department of Justice, the department shall ascertain the information required pursuant to this section within three working days. When the Department of Justice ascertains that an individual whose fingerprints were submitted to it pursuant to subdivision (a) has a pending criminal proceeding for a felony as defined in Section 45122.1 or has been convicted of a felony as defined in Section 45122.1, the department shall notify the employer designated by the individual of that fact. The notification shall be delivered by telephone or electronic mail to the employer.

(2) The Department of Justice, at its discretion, may notify the school district in instances when the employee is defined as having a pending criminal proceeding described in Section 45122.1 or has been convicted of a felony as defined in Section 45122.1.

(3) The Department of Justice may forward one copy of the fingerprints to the Federal Bureau of Investigation to verify any record of previous arrests or convictions of the applicant. The Department of Justice shall review the criminal record summary it obtains from the Federal Bureau of Investigation and shall notify the employer only as to whether or not an applicant has any convictions or arrests pending adjudication for offenses which, if committed in California, would have been punishable as a violent or serious felony. The Department of Justice shall not provide any specific offense information received from the Federal Bureau of Investigation. The Department of Justice shall provide written notification to the contract employer only concerning whether an applicant for employment has any conviction or arrest pending final adjudication for any of those crimes, as specified in Section 45122.1, but shall not provide any information identifying any offense for which an existing employee was convicted or has an arrest pending final adjudication.

(f) An entity having a contract as specified in subdivision (a) and an entity required to comply with this section pursuant to subdivision (d) shall not permit an employee to come in contact with pupils until the Department of Justice has ascertained that the employee has not been convicted of a felony as defined in Section 45122.1.

(1) This prohibition does not apply to an employee solely on the basis that the employee has been convicted of a felony if the employee 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.

(2) This prohibition does not apply to an employee solely on the basis that the employee has been convicted of a serious felony that is not also a violent felony if that employee 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 schoolsite employment for at least one year. If the offense in question occurred outside this state, then the person may seek a finding of rehabilitation from the court in the school district in which he or she is resident.

(g) An entity having a contract as specified in subdivision (a) and an entity required to comply with this section pursuant to subdivision (d) shall certify in writing to the school district that neither the employer nor any of its employees who are required by this section to submit or have their fingerprints submitted to the Department of Justice and who may come in contact with pupils have been convicted of a felony as defined in Section 45122.1.

(h) An entity having a contract as specified in subdivision (a) on the effective date of this section and an entity required to comply

with this section pursuant to subdivision (d) by a school district with which it has a contract on the effective date of the amendments made to this section during the 1997–98 Regular Session shall complete the requirements of this section within 90 days of that date.

(i) For purposes of this section, a charter school shall be deemed to be a school district.

(j) Where reasonable access to the statewide electronic fingerprinting network is available, the Department of Justice may mandate electronic submission of the fingerprint cards and other information required by this section.

SEC. 12. Section 45125.2 is added to the Education Code, to read:

45125.2. (a) A school district contracting with an entity for the construction, reconstruction, rehabilitation, or repair of a school facility where the employees of the entity will have contact, other than limited contact, with pupils shall ensure the safety of the pupils by one or more of the following methods:

(1) The installation of a physical barrier at the worksite to limit contact with pupils.

(2) Continual supervision and monitoring of all employees of the entity by an employee of the entity whom the Department of Justice has ascertained has not been convicted of a violent or serious felony. For purposes of this paragraph, an employee of the entity may submit his or her fingerprints to the Department of Justice pursuant to subdivision (a) of Section 45125.1 and the department shall comply with subdivision (d) of Section 45125.1.

(3) Surveillance of employees of the entity by school personnel.

(b) An entity that contracts with a school district for the construction, reconstruction, rehabilitation, or repair of a school facility is not required to comply with the requirements of Section 45125.1 if one or more of the methods described in subdivision (a) is utilized.

(c) For purposes of this section, a violent felony is any felony listed in subdivision (c) of Section 667.5 of the Penal Code and a serious felony is any felony listed in subdivision (c) of Section 1192.7 of the Penal Code.

(d) This section shall not apply to an entity providing construction, reconstruction, rehabilitation, or repair services to a school district in an emergency or exceptional situation, such as when pupil health or safety is endangered or when repairs are needed to make school facilities safe and habitable.

SEC. 13. Section 4 of this bill incorporates amendments to Section 44237 of the Education Code proposed by both this bill and AB 1392. 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 44237 of the Education Code, and (3) this bill is enacted after AB 1392, in which case Section 44237 of the Education Code, as amended by Section 3 of this bill, shall

remain operative only until the operative date of AB 1392, at which time Section 4 of this bill shall become operative.

SEC. 14. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

To protect the safety and well-being of pupils in public and private schools in the state, it is necessary that this act take effect immediately.

SEC. 15. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

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

CHAPTER 841

An act to add Sections 13100.1 and 13100.2 to the Penal Code, relating to law enforcement.

[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 13100.1 is added to the Penal Code, to read:

13100.1. (a) The Attorney General shall appoint an advisory committee to the California-Criminal Index and Identification (Cal-CII) system to assist in the ongoing management of the system with respect to operating policies, criminal records content, and records retention. The committee shall serve at the pleasure of the Attorney General, without compensation, except for reimbursement of necessary expenses.

(b) The committee shall consist of the following representatives:

(1) One representative from the California Police Chiefs' Association.

(2) One representative from the California Peace Officers' Association.

(3) Three representatives from the California State Sheriffs' Association.

(4) One trial judge appointed by the Judicial Council.

(5) One representative from the California District Attorneys' Association.

(6) One representative from the California Court Clerks' Association.

(7) One representative from the Office of Criminal Justice Planning.

(8) One representative from the Chief Probation Officers' Association.

(9) One representative from the Department of Corrections.

(10) One representative from the Department of the California Highway Patrol.

(11) One member of the public, appointed by the Senate Committee on Rules, who is knowledgeable and experienced in the process of utilizing background clearances.

(12) One member of the public, appointed by the Speaker of the Assembly, who is knowledgeable and experienced in the process of utilizing background clearances.

SEC. 2. Section 13100.2 is added to the Penal Code, to read:

13100.2. (a) The designee of the Attorney General shall serve as chair of the committee.

(b) The Department of Justice shall provide staff and support for the committee.

(c) The committee shall meet at least twice annually. Subcommittees shall be formed and meet as necessary. All meetings shall be open to the public and reports shall be made available to the Legislature and other interested parties.

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 842

An act to amend Sections 13825.2, 13825.4, and 13825.6 of the Penal Code and to amend Section 1915 of the Welfare and Institutions Code, relating to crime prevention, and making an appropriation

therefor, and declaring the urgency therefor, 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. Section 13825.2 of the Penal Code is amended to read:

13825.2. (a) The California Gang, Crime, and Violence Prevention Partnership Program shall be administered by the Department of Justice for the purposes of reducing gang, criminal activity, and youth violence to the extent authorized pursuant to this chapter in communities with a high incidence of gang violence, including, but not limited to, the communities of Fresno, Glendale, Long Beach, Los Angeles, Oakland, Riverside, Santa Ana, Santa Cruz, San Bernardino, San Diego, San Jose, San Francisco, San Mateo, Santa Monica, and Venice. The department shall also consider communities that meet any one of the following criteria:

(1) An at-risk youth population, as defined in subdivision (c) of Section 13825.4, that is significantly disproportionate to the general youth population of that community.

(2) A juvenile arrest rate that is significantly disproportionate to the general youth population of that community.

(3) Significant juvenile gang problems or a high number of juvenile gang-affiliated acts of violence.

(b) All state and local juvenile detention facilities, including, but not limited to, facilities, juvenile halls, youth ranches, and youth camps of the Department of the Youth Authority, shall also be considered eligible to receive services through community-based organizations or nonprofit agencies that are operating programs funded under this chapter.

SEC. 2. Section 13825.4 of the Penal Code is amended to read:

13825.4. Community-based organizations and nonprofit agencies that receive funds under this chapter shall utilize the funds to provide services and activities designed to prevent or deter at-risk youth from participating in gangs, criminal activity, or violent behavior.

(a) These prevention and intervention efforts shall include, but not be limited to, any of the following:

(1) Services and activities designed to do any of the following:

(A) Teach alternative methods for resolving conflicts and responding to violence, drugs, and crime.

(B) Develop positive and life-affirming attitudes and behaviors.

(C) Build self-esteem.

(2) Recreational, educational or cultural activities.

(3) Counseling or mentoring services.

(4) Economic development activities.

(b) Funds allocated under this chapter may not be used for services or activities related to suppression, law enforcement, incarceration, or other purposes not related to the prevention and deterrence of gangs, crime, and violence.

Nothing in this paragraph shall prevent funds allocated under this chapter from being used for violence prevention and gang crime deterrence services provided by community-based organizations and nonprofit agencies to youths incarcerated in juvenile detention facilities.

(c) Services and activities provided with funds under this chapter shall be used for at-risk youth who are defined as persons from age 5 to 20 years of age and who fall into one or more of the following categories:

(1) Live in a high-crime or high-violence neighborhood as identified by local or federal law enforcement agencies.

(2) Live in a low-economic neighborhood as identified by the U.S. Census or come from an impoverished family.

(3) Are excessively absent from school or are doing poorly in school as identified by personnel from the youth's school.

(4) Come from a socially dysfunctional family as identified by local or state social service agencies.

(5) Have had one or more contacts with the police.

(6) Have entered the juvenile justice system.

(7) Are identified by the juvenile justice system as being at risk.

(8) Are current or former gang members.

(9) Have one or more family members living at home who are current or former members of a gang.

(10) Are identified as wards of the court, as defined in Section 601 of the Welfare and Institutions Code.

(d) Except as provided in subdivision (e), in carrying out a program of prevention and intervention services and activities with funds received under this chapter, community-based organizations and nonprofit agencies shall do all of the following:

(1) Collaborate with other local community-based organizations, nonprofit agencies or local agencies providing similar services, local schools, local law enforcement agencies, residents and families of the local community, private businesses in the local community, and charitable or religious organizations, for purposes of developing plans to provide a program of prevention and intervention services and activities with funds provided under this chapter.

(2) Identify other community-based organizations, nonprofit agencies, local agencies, and charitable or religious organizations in the local community that can serve as a resource in providing services and activities under this chapter.

(3) Follow the public health model approach in developing and carrying out a program to prevent, deter or reduce youth gangs, crime or violence by (A) identifying risk factors of the particular population to be targeted, (B) implementing protective factors to

prevent or reduce gangs, crime or violence in the particular community to be serviced, and (C) designing community guidelines for prevention and intervention.

(4) Provide referral services to at-risk youth who are being served under this chapter to appropriate organizations and agencies where the community-based organization or nonprofit agency can readily identify a need for counseling, tutorial, family support, or other types of services.

(5) Provide the parents and family of the at-risk youth with support, information, and services to cope with the problems the at-risk youth, the parents, and the family are confronting.

(6) Involve members of the at-risk target population in the development, coordination, implementation, and evaluation of their program of services and activities.

(7) Objectively evaluate the effectiveness of their services and activities to determine changes in attitudes or behaviors of the at-risk youth being served under this chapter towards gangs, crime, and violence.

(e) Providers of programs that operate in juvenile detention facilities shall not be required to meet the criteria specified in paragraph (5) of subdivision (d) for those programs offered only in those facilities.

SEC. 3. Section 13825.6 of the Penal Code is amended to read:

13825.6. Funding for the California Gang, Crime, and Violence Prevention Partnership Program shall be subject to the following:

(a) 2 percent of the amounts appropriated in the Budget Act shall be transferred each year upon the approval of the Director of Finance, for expenditure as necessary for the Department of Justice to administer this program.

(b) 3 percent of the amounts appropriated in the Budget Act shall be transferred each year upon the approval of the Director of Finance, for expenditure as necessary for the department to provide technical assistance to community-based organizations and nonprofit agencies providing services under this chapter. Nothing in this chapter precludes the department from providing technical assistance services through an independent agency or organization.

SEC. 4. Section 1915 of the Welfare and Institutions Code is amended to read:

1915. (a) The Department of the Youth Authority shall purchase, after a competitive bidding process, two medical devices that utilize a laser to remove a tattoo from a person's skin. The department shall determine, through a competitive bidding process, the placement of the two medical devices pursuant to the following guidelines:

(1) One of the medical devices shall be located within Los Angeles County and the other shall be located within one of the following counties: Alameda, San Francisco, San Mateo, Santa Clara, and Santa Cruz.

(2) Possible sites may include: a licensed health facility, a licensed health clinic, an educational institution, or a probation office. The department may enter into an agreement with a licensed health facility to permit the health facility to use the medical device when it is not needed for tattoo removal pursuant to this section if the health facility provides tattoo removal services pursuant to this section free of charge.

(3) The medical devices shall remain the property of the state. However, they shall be used in conjunction with the tattoo removal program pursuant to this section for the functional life of the medical devices.

(b) Candidates for tattoo removal shall be screened by community groups working collaboratively with the operators of the sites of the tattoo removal devices. A male candidate for tattoo removal shall have a tattoo on his lower arm, hand, neck, or head. A female candidate for tattoo removal shall have a tattoo that would be visible in a professional work environment. To be eligible for participation, the presence of the tattoo must be deemed to present either a threat to the personal safety of, or an obstacle to the employability of, the candidate. Priority shall be given to candidates who have a job offer that is contingent upon removal of the tattoo. At the discretion of the organization that screens a candidate, a candidate for this tattoo removal may be required to complete 20 hours of supervised public service work in order to participate in this program. Parental consent shall be required before the tattoo of any person under 18 years of age is removed.

Community groups recommended pursuant to this subdivision shall meet the following criteria:

(1) Serve at-risk youth, exoffenders, exconvicts, or current and former gang members.

(2) Possess an established record of providing community-based services for at least one year to the persons described in paragraph (1).

(c) Community groups that participate in this program and the operators of the sites of the tattoo removal devices shall solicit the pro bono services of licensed health care providers to participate in the program in order to increase the number of individuals served.

(d) It is the intent of the Legislature that at least 200 tattoo removals shall be performed at each tattoo removal site in its first year of operation. After two years of operation, community groups that participate in this program and the operators of each site shall report to the Department of the Youth Authority on the number of tattoo removals performed by each device and the success of the program in assisting individuals to join the work force. By March 1, 2000, the Department of the Youth Authority shall report these findings to the Legislature.

(e) It is the intent of the Legislature to expand these pilot programs as rapidly as possible to other areas of the state where there

is gang violence and where there are active community-based gang violence prevention programs.

SEC. 5. There is hereby appropriated from the General Fund the following amounts:

The sum of four hundred eighty thousand dollars ($480,000) to the Department of the Youth Authority for the following:

(a) The purchase or lease of four laser tattoo removal devices and maintenance agreements to be placed, respectively, in the Counties of Los Angeles, San Diego, Fresno, and Orange. The placement of the devices in the Counties of San Diego, Fresno, and Orange shall be determined in the competitive bidding process specified in Section 1915 of the Welfare and Institutions Code. The device for the County of Los Angeles may be placed at the site that ranked second in the competitive bidding process for the placement of the laser device purchased with funds provided by Senate Bill No. 526 of the 1997–98 Regular Session.

(b) Grants to the tattoo removal sites that are awarded tattoo removal devices through the competitive bidding process outlined in Section 1915 of the Welfare and Institutions Code. These grant funds may be used to contract with licensed health care providers for the provision of tattoo removal services and tattoo removal support services, and for administrative, material, and other costs necessary for the provision of tattoo removals to targeted tattoo removal candidates.

(c) The administration of this tattoo removal grant program.

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 gang violence and prepare young people for gainful activity as rapidly as possible, it is necessary that this act take effect immediately.

CHAPTER 843

An act to amend Sections 4501.1, 7516.5, and 7555 of the Penal Code, relating to prisoners.

[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 4501.1 of the Penal Code is amended to read:

4501.1. (a) Every person confined in the state prison who commits a battery upon the person of any officer or employee of the

state prison by gassing is guilty of aggravated battery and shall be punished as specified in Section 4501.5.

(b) For purposes of this section, "gassing" means intentionally placing or throwing, or causing to be placed or thrown, upon the person of another, any mixture of human excrement or other bodily fluids or substances.

(c) The warden or other person in charge of the state prison shall use every available means to immediately investigate all reported or suspected violations of subdivision (a). If there is probable cause to believe that the inmate has violated subdivision (a), the chief medical officer of the state prison, or his or her designee, may, when he or she deems it medically necessary to protect the health of an officer or employee who may have been subject to a violation of this section, order the inmate to receive an examination or test for hepatitis or tuberculosis or both hepatitis and tuberculosis on either a voluntary or involuntary basis immediately after the event, and periodically thereafter as determined to be necessary by the medical officer in order to ensure that further hepatitis or tuberculosis transmission does not occur. These decisions shall be consistent with an occupational exposure as defined by the Center for Disease Control and Prevention. The results of any examination or test shall be provided to the officer or employee who has been subject to a reported or suspected violation of this section. Nothing in this subdivision shall be construed to otherwise supersede the operation of Title 8 (commencing with Section 7500). Any person performing tests, transmitting test results, or disclosing information pursuant to this section shall be immune from civil liability for any action taken in accordance with this section.

(d) The warden or other person in charge of the state prison shall refer all reports of aggravated battery by gassing to the local district attorney for prosecution.

(e) The Department of Corrections shall report to the Legislature, by January 1, 2000, its findings and recommendations on gassing incidents at the state prison and the medical testing authorized by this section. The report shall include, but not be limited to, all of the following:

(1) The total number of gassing incidents at each state prison facility up to the date of the report.

(2) The disposition of each gassing incident, including the administrative penalties imposed, the number of incidents that are prosecuted, and the results of those prosecutions, including any penalties imposed.

(3) A profile of the inmates who commit the aggravated batteries, including the number of inmates who have one or more prior serious or violent felony convictions.

(4) Efforts that the department has taken to limit these incidents, including staff training and the use of protective clothing and goggles.

(5) The results and costs of the medical testing authorized by this section.

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

SEC. 2. Section 7555 of the Penal Code is amended to read:

7555. This title 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.

Notwithstanding this section, whenever, prior to January 1, 2005, a law enforcement agency employee has filed a report pursuant to Section 7510, or a request for a human immunodeficiency virus (HIV) test has been filed pursuant to Section 7512, or any other procedure for requiring a test has been commenced pursuant to this title, the proceedings shall be permitted to continue on or after January 1, 2005, until they have been concluded.

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 844

An act to add Chapter 3.34 (commencing with Section 44730) to Part 25 of the Education Code, relating to teachers, and making an appropriation therefor.

[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. It is the intent of the Legislature that each schoolsite administrator, appropriate instructional classified employee, and teacher of pupils in grades 4 to 8, inclusive, possess the knowledge and skills to effectively use education technology in the daily instruction of pupils and in the recordkeeping needed to support that instruction. It is also the intent of the Legislature that the in-service training provided to assist schoolsite administrators, appropriate

instructional classified employees, and teachers to obtain this knowledge and skills be integrated into the regular ongoing professional development program and not exist primarily as stand-alone educational technology classes.

SEC. 2. Chapter 3.34 (commencing with Section 44730) is added to Part 25 of the Education Code, to read:

CHAPTER 3.34. EDUCATION TECHNOLOGY STAFF DEVELOPMENT PROGRAM

44730. (a) The Superintendent of Public Instruction shall allocate funds appropriated for purposes of this chapter to school districts for the purposes of funding the Education Technology Staff Development Program in an equal amount per pupil in grades 4 to 8, inclusive, based upon the enrollment in all eligible schools in those grades, as determined by the State Department of Education, as of October of the prior fiscal year, but the total amount allocated to an eligible school district shall not be greater than an amount equal to twenty dollars ($20) per pupil in grades 4 to 8, inclusive, in the eligible schools in the school district.

(b) The State Department of Education shall monitor this program to ensure that an equitable share of the funding allocated pursuant to this chapter serves low-income disadvantaged pupils.

44731. A school district shall certify all of the following, to the State Department of Education as a condition of each applicant school being eligible to receive funding pursuant to this chapter:

(a) All schools maintaining any of grades 4 to 8, inclusive, that are applying for funding under this chapter have access for instructional purposes to the Internet in their classrooms and have a sufficient number of up-to-date computers or other devices that provide Internet access in their classrooms for instructional use.

(b) The funds received pursuant to this chapter shall be spent by the eligible schools for the purpose of providing in-service training to their schoolsite administrators, appropriate instructional classified employees, and certificated employees who provide direct instructional services to pupils in grades 4 to 8, inclusive, in the use of education technology to support the daily instruction of pupils and the recordkeeping necessary to support that instruction.

(c) The funds received pursuant to this chapter shall be expended for in-service training programs in education technology that meet or exceed the proficiency standards developed by the Commission on Teacher Credentialing pursuant to Section 44259.

(d) The applicant schools have developed action plans that provide for a program of in-service training in education technology for their schoolsite administrators, appropriate instructional classified employees, and all certificated employees who provide direct instructional services to pupils in grades 4 to 8, inclusive. In the action plans, the applicant schools shall, to the extent feasible and

appropriate, integrate training in educational technology with all of the following:

(1) Staff development days authorized pursuant to Section 44670.6 or 52854.

(2) Staff development funds available from all state and federal funding sources.

(3) Involvement of the parents and guardians of pupils enrolled in the school district.

(e) In-service training provided pursuant to this chapter shall be coordinated and integrated with any other in-service training, including staff development offered pursuant to Article 7.5 (commencing with Section 44579) of Chapter 3.

SEC. 3. The amount appropriated in Item 6110-230-0001 of Section 2.00 of the Budget Act of 1998 for Education Technology School District grants is hereby reappropriated to the Superintendent of Public Instruction for allocation to school districts to fund the Education Technology Staff Development Program contained in Chapter 3.34 (commencing with Section 44730) of Part 25 of the Education Code. No funding other than the amount that would have been available for education technology school district grants shall be affected by this reappropriation. In subsequent years, the Education Technology Staff Development Program shall continue to be allocated from Item 6110-230-0001, for local assistance, Department of Education, or successor items, of the annual Budget Act.

CHAPTER 845

An act to amend Section 60643 of the Education Code, relating to pupil testing.

[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 60643 of the Education Code is amended to read:

60643. (a) To be eligible for consideration under Section 60642 by the State Board of Education, test publishers shall agree in writing to meet the following requirements, if selected:

(1) Post a performance bond in an amount to be determined by the State Board of Education.

(2) Enter into a standard agreement with all school districts in the state that includes a payment schedule and conditions prescribed by the State Board of Education.

(3) Align the achievement test to the academically rigorous content and performance standards adopted by the State Board of Education.

(4) Comply with subdivisions (c) and (d) of Section 60645.

(5) Provide individual pupil scores to parents or guardians, teachers, and school administrators.

(6) Provide aggregate scores to teachers, administrators, governing boards of school districts, county boards of education, and the State Department of Education in all of the following forms and formats:

(A) Grade level.

(B) School level.

(C) District level.

(D) Countywide.

(E) Statewide.

(F) Comparison of statewide scores relative to other states.

(7) Provide disaggregated scores, based on limited-English-proficient status and non-limited-English-proficient status. For purposes of this section, pupils with "non-limited-English-proficient status" shall include the total of those pupils who are English-only pupils, fluent-English proficient pupils, and redesignated fluent-English proficient pupils. These scores shall be provided to teachers, administrators, governing boards of school districts, county boards of education, and the State Department of Education in the same form and formats listed in paragraph (6).

(8) Provide disaggregated scores by pupil gender and provide disaggregated scores based on whether pupils are economically disadvantaged or not. These disaggregated scores shall be in the same form and formats listed in paragraph (6). In any one year, the disaggregation shall entail information already being collected by school districts, county offices of education, or charter schools.

(9) Provide all information listed in paragraphs (6), (7), and (8) to the State Board of Education and to the recipients listed in paragraph (6), in hard copy and in an electronic medium compatible for access through the Internet.

(b) It is the intent of the Legislature that the publisher work with the Superintendent of Public Instruction and the State Board of Education in developing a methodology to disaggregate statewide scores as required in paragraphs (7) and (8) of subdivision (a), and in determining which variable indicated on the STAR testing document shall serve as a proxy for "economically disadvantaged" status pursuant to paragraph (8).

(c) Access to any information about individual pupils or their families shall be granted to the publisher only for purposes of correctly associating test results with the pupils who produced those results or for reporting and disaggregating test results as required by this section. School districts are prohibited from excluding a pupil

from the test if a parent or parents decline to disclose income. Nothing in this chapter shall be construed to abridge or deny rights to confidentiality contained in the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Sec. 1232g) or other applicable provisions of state and federal law that protect the confidentiality of information collected by educational institutions.

(d) Notwithstanding any other provision of law, the publisher of the achievement test designated pursuant to Section 60642 shall comply with all of the conditions and requirements enumerated in subdivision (a) to the satisfaction of the State Board of Education.

(e) The State Department of Education is hereby authorized to develop a standard agreement, subject to the approval of the State Board of Education, that all school districts shall be required to use. The agreement shall contain provisions for withholding payments for test development, publication, administration, scoring, test security, data aggregation, analysis, reporting, and electronic transmission. The State Department of Education shall specify in the standard agreement that final payments by school districts or any agent of the State of California shall be withheld until the Superintendent of Public Instruction notifies all school districts that the test administration is completed for the academic year and the State Board of Education has received complete statewide data to its satisfaction reported in the manner prescribed by this section. The Superintendent of Public Instruction shall notify school districts as required by this subdivision within seven work days after receiving instruction from the State Board of Education.

(f) The State Board of Education shall consider the performance of publishers no later than July 31 following the test administration for purposes of making appropriate determinations pursuant to the standard agreement authorized pursuant to this section. Any failure of the test publisher to meet the terms of the standard agreement or other requirements of this section that is caused by a school district's failure to fulfill its obligations shall not be deemed cause for a determination adverse to the test publisher under this subdivision.

SEC. 1.5. Section 60643 of the Education Code, as amended by Section 21 of Senate Bill 1564, is amended to read:

60643. (a) To be eligible for consideration under Section 60642 by the State Board of Education, test publishers shall agree in writing each year to meet the following requirements, if selected:

(1) Post a performance bond in an amount to be determined by the State Board of Education.

(2) Enter into a standard agreement with all school districts in the state that includes a payment schedule and conditions prescribed by the State Board of Education.

(3) Align the achievement test to the academically rigorous content and performance standards adopted by the State Board of Education.

(4) Comply with subdivisions (c) and (d) of Section 60645.

(5) Provide individual pupil scores to parents or guardians, teachers, and school administrators.

(6) Provide aggregate scores to teachers, administrators, governing boards of school districts, county boards of education, and the State Department of Education in all of the following forms and formats:

(A) Grade level.

(B) School level.

(C) District level.

(D) Countywide.

(E) Statewide.

(F) Comparison of statewide scores relative to other states.

(7) Provide disaggregated scores, based on limited-English-proficient status and non-limited-English-proficient status. For purposes of this section, pupils with "non-limited-English-proficient status" shall include the total of those pupils who are English-only pupils, fluent-English proficient pupils, and redesignated fluent-English proficient pupils. These scores shall be provided to teachers, administrators, governing boards of school districts, county boards of education, and the State Department of Education in the same form and formats listed in paragraph (6).

(8) Provide disaggregated scores by pupil gender and provide disaggregated scores based on whether pupils are economically disadvantaged or not. These disaggregated scores shall be in the same form and formats as listed in paragraph (6). In any one year, the disaggregation shall entail information already being collected by school districts, county offices of education, or charter schools.

(9) Provide information listed in paragraphs (6), (7), and (8) to the State Board of Education and to the recipients listed in paragraph (6), in hard copy and in an electronic medium compatible for access through the Internet.

(b) It is the intent of the Legislature that the publisher work with the Superintendent of Public Instruction and the State Board of Education in developing a methodology to disaggregate statewide scores as required in paragraphs (7) and (8) of subdivision (a), and in determining which variable indicated on the STAR testing document shall serve as a proxy for "economically disadvantaged" status pursuant to paragraph (8).

(c) Access to any information about individual pupils or their families shall be granted to the publisher only for purposes of correctly associating test results with the pupils who produced those results or for reporting and disaggregating test results as required by this section. School districts are prohibited from excluding a pupil from the test if a parent or parents decline to disclose income. Nothing in this chapter shall be construed to abridge or deny rights to confidentiality contained in the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Sec. 1232g) or other applicable

provisions of state and federal law that protect the confidentiality of information collected by educational institutions.

(d) Notwithstanding any other provision of law, the publisher of the achievement test designated pursuant to Section 60642 shall comply with all of the conditions and requirements enumerated in subdivision (a) to the satisfaction of the State Board of Education.

(e) (1) The State Department of Education is hereby authorized to develop a standard agreement, subject to the approval of the State Board of Education, that all school districts and the test publisher shall be required to use. The agreement shall contain provisions for withholding full or partial payments for individual components of test administration, including, but not limited to, test development, publication, administration, scoring, test security, data aggregation, analysis, reporting, or electronic transmission. The standard agreement shall specify the exact reports and data files that are to be provided to the district by the publisher, and the number of copies of each report or file to be provided. The State Department of Education shall also specify in the standard agreement that all reports and files must be certified by the district as complete and accurate before final payment to the publisher from the district. The State Department of Education shall specify in the standard agreement that final payments or portions thereof by school districts or any agent of the State of California shall be withheld until the Superintendent of Public Instruction notifies all school districts that the test administration is completed for the academic year and the State Board of Education has made a determination pursuant to paragraph (2) or (3). The Superintendent of Public Instruction shall notify school districts as required by this subdivision within seven work days after receiving instruction from the State Board of Education.

(2) If satisfied that the publisher has met the requirements of subdivision (a), and that the State Department of Education and the State Board of Education have received complete statewide data, to the satisfaction of the board, reported in the manner prescribed by this section, the State Board of Education shall determine that all school districts may make final payments to the publisher.

(3) If the State Board of Education is not satisfied that the publisher has met all of the requirements of subdivision (a) or any of the individual components of test administration, the board may authorize partial payment. The State Board of Education may adopt regulations establishing a process for partial payments to the test publisher by school districts.

(f) The State Board of Education shall consider the performance of publishers no later than July 31 following the test administration for purposes of making appropriate determinations pursuant to the standard agreement authorized pursuant to this section. Any failure of the test publisher to meet the terms of the standard agreement or other requirements of this section that is caused by a school district's

failure to fulfill its obligations shall not be deemed cause for a determination adverse to the test publisher under this subdivision.

SEC. 2. Section 1.5 of this bill incorporates amendments to Section 60643 of the Education Code proposed by both this bill and Senate Bill No. 1564. 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 60643 of the Education Code, and (3) this bill is enacted after SB 1564, in which case Section 60643 of the Education Code, as amended by SB 1564, 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 shall not become operative.

CHAPTER 846

An act to amend Sections 2550.3, 35120, 42238, 42238.5, 42238.7, 42238.8, 42238.9, 42243.7, 42280, 42281, 42282, 42283, 42284, 42285, 46010, 48205, 48664, 48980, 49067, 52335.2, 56836.08, 56836.10, 56836.11, 56836.12, 56836.15, and 56836.24 of, and to add Section 42289.5 to, the Education Code, and to amend Section 8880.5 of the Government Code, relating to school revenue limits, 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. Section 2550.3 of the Education Code is amended to read:

2550.3. Each county superintendent of schools, as a condition of apportionment, shall report separately to the Superintendent of Public Instruction, not later than May 1, 1998, and September 1, 1998, respectively, what portions of attendance in the schools and classes maintained by the county superintendent that was reported for each of the 1996–97 and 1997–98 school years pursuant to Section 41601 consisted of absences excused pursuant to subdivision (b) of Section 46010 and to Section 46015, as those sections read on July 1, 1996.

Each report shall be prepared in accordance with instructions and on forms prescribed by the Superintendent of Public Instruction.

SEC. 2. Section 35120 of the Education Code is amended to read:

35120. (a) (1) In any school district in which the average daily attendance for the prior school year exceeded 400,000, each member of the city board of education or the governing board of the district who actually attends all meetings held may receive as compensation for his or her services a sum not to exceed two thousand dollars ($2,000) per month.

(2) In any school district that is not located in a city and county, and in which the average daily attendance for the prior school year exceeded 60,000, the governing board may prescribe, as compensation for the services of each member of the board who actually attends all meetings held, a sum not to exceed one thousand five hundred dollars ($1,500) in any month.

(3) In any school district in which the average daily attendance for the prior school year was 60,000, or less, but more than 25,000, each member of the city board of education or the governing board of the district who actually attends all meetings held may receive as compensation for his or her services a sum not to exceed seven hundred fifty dollars ($750) in any month.

(4) In any school district in which the average daily attendance for the prior school year was 25,000, or less, but more than 10,000, each member of the city board of education or the governing board of the district who actually attends all meetings held may receive as compensation for his or her services a sum not to exceed four hundred dollars ($400) in any month.

(5) In any school district in which the average daily attendance for the prior school year was 10,000 or less but more than 1,000, each member of the city board of education or the governing board of the district who actually attends all meetings held may receive as compensation for his or her services a sum not to exceed two hundred forty dollars ($240) in any month.

(6) In any school district in which the average daily attendance for the prior school year was 1,000 or less but more than 150, each member of the city board of education or the governing board of the district who actually attends all meetings held may receive as compensation for his or her services a sum not to exceed one hundred twenty dollars ($120) in any month.

(7) In any school district in which the average daily attendance for the prior school year was less than 150, each member of the city board of education or the governing board of the district who actually attends all meetings held may receive as compensation for his or her services a sum not to exceed sixty dollars ($60) per month.

(8) Any member who does not attend all meetings held in any month may receive, as compensation for his or her services, an amount not greater than the maximum amount allowed by this subdivision divided by the number of meetings held and multiplied by the number of meetings actually attended.

(9) For the purposes of providing compensation pursuant to paragraphs (1) to (7), inclusive, average daily attendance for the prior school year may be increased by a school district's percentage of excused absences reported for the 1996–97 fiscal year.

(b) The compensation of members of the governing board of a school district newly organized or reorganized shall be governed by subdivision (a). For this purpose, the total average daily attendance in all of the schools of the district in the school year in which the

organization or reorganization became effective pursuant to Section 4062 shall be deemed to be the average daily attendance in the district for the prior school year.

(c) A member may be paid for any meeting when absent if the board by resolution duly adopted and included in its minutes finds that at the time of the meeting he or she is performing services outside the meeting for the school district or districts, he or she was ill or on jury duty, or the absence was due to a hardship deemed acceptable by the board.

(d) The compensation shall be a charge against the funds of the school district. If the city board of education or the governing board of the district is the governing board of more than one school district, the compensation shall be charged against and paid by the respective school districts in the same proportion as the salary of the city superintendent of schools is charged against them. Compensation shall be reduced by an amount equal to any salary or compensation paid to the members of the city board of education from any funds of the city.

SEC. 3. Section 42238 of the Education Code is amended to read:

42238. (a) For the 1984–85 fiscal year and each fiscal year thereafter, the county superintendent of schools shall determine a revenue limit for each school district in the county pursuant to this section.

(b) The base revenue limit for the current fiscal year shall be determined by adding to the base revenue limit for the prior fiscal year the following amounts:

(1) The inflation adjustment specified in Section 42238.1.

(2) For the 1995–96 fiscal year, the equalization adjustment specified in Section 42238.4.

(3) For the 1996–97 fiscal year, the equalization adjustments specified in Sections 42238.41, 42238.42, and 42238.43.

(4) For the 1985–86 fiscal year, the amount received per unit of average daily attendance in the 1984–85 fiscal year pursuant to Section 42238.7.

(5) For the 1985–86, 1986–87, and 1987–88 fiscal years, the amount per unit of average daily attendance received in the prior fiscal year pursuant to Section 42238.8.

(c) Except for districts subject to subdivision (d), the base revenue limit computed pursuant to subdivision (b) shall be multiplied by the district average daily attendance computed pursuant to Section 42238.5.

(d) (1) For districts for which the number of units of average daily attendance determined pursuant to Section 42238.5 is greater for the current fiscal year than for the 1982–83 fiscal year, compute the following amount, in lieu of the amount computed pursuant to subdivision (c):

(A) Multiply the base revenue limit computed pursuant to subdivision (c) by the average daily attendance computed pursuant to Section 42238.5 for the 1982–83 fiscal year.

(B) Multiply the lesser of the amount in subdivision (c) or 1.05 times the statewide average base revenue limit per unit of average daily attendance for districts of similar type for the current fiscal year by the difference between the average daily attendance computed pursuant to Section 42238.5 for the current and 1982–83 fiscal years.

(C) Add the amounts in subparagraphs (A) and (B).

(2) This subdivision shall become inoperative on July 1, 1998.

(e) For districts electing to compute units of average daily attendance pursuant to paragraph (3) of subdivision (a) of Section 42238.5, the amount computed pursuant to Article 4 (commencing with Section 42280) shall be added to the amount computed in subdivision (c) or (d), as appropriate.

(f) For the 1984–85 fiscal year only, the county superintendent shall reduce the total revenue limit computed in this section by the amount of the decreased employer contributions to the Public Employees' Retirement System resulting from enactment of Chapter 330 of the Statutes of 1982, offset by any increase in those contributions, as of the 1983–84 fiscal year, resulting from subsequent changes in employer contribution rates.

(g) The reduction required by subdivision (f) shall be calculated as follows:

(1) Determine the amount of employer contributions that would have been made in the 1983–84 fiscal year if the applicable Public Employees' Retirement System employer contribution rate in effect immediately prior to the enactment of Chapter 330 of the Statutes of 1982 were in effect during the 1983–84 fiscal year.

(2) Subtract from the amount determined in paragraph (1) the greater of subparagraph (A) or (B):

(A) The amount of employer contributions that would have been made in the 1983–84 fiscal year if the applicable Public Employees' Retirement System employer contribution rate in effect immediately after the enactment of Chapter 330 of the Statutes of 1982 were in effect during the 1983–84 fiscal year.

(B) The actual amount of employer contributions made to the Public Employees' Retirement System in the 1983–84 fiscal year.

(3) For purposes of this subdivision, employer contributions to the Public Employees' Retirement System for any of the following shall be excluded from the calculation specified above:

(A) Positions supported totally by federal funds that were subject to supplanting restrictions.

(B) Positions supported by funds received pursuant to Section 42243.6.

(C) Positions supported, to the extent of employer contributions not exceeding twenty-five thousand dollars ($25,000) by any single educational agency, from a revenue source determined on the basis

of equity to be properly excludable from the provisions of this subdivision by the Superintendent of Public Instruction with the approval of the Director of Finance.

(4) For accounting purposes, the reduction made by this subdivision may be reflected as an expenditure from appropriate sources of revenue as directed by the Superintendent of Public Instruction.

(h) The Superintendent of Public Instruction shall apportion to each school district the amount determined in this section less the sum of:

(1) The district's property tax revenue received pursuant to Chapter 3 (commencing with Section 75) and Chapter 6 (commencing with Section 95) of Part 0.5 of the Revenue and Taxation Code.

(2) The amount, if any, received pursuant to Part 18.5 (commencing with Section 38101) of the Revenue and Taxation Code.

(3) The amount, if any, received pursuant to Chapter 3 (commencing with Section 16140) of the Government Code.

(4) Prior years' taxes and taxes on the unsecured roll.

(5) Fifty percent of the amount received pursuant to Section 41603.

(6) The amount of motor vehicle license fees distributed pursuant to Section 11003.4 of the Revenue and Taxation Code.

(7) The amount, if any, received pursuant to any provision of the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code), except for any amount received pursuant to Section 33401 or 33676 of the Health and Safety Code that is used for land acquisition, facility construction, reconstruction, or remodeling, or deferred maintenance, except for any amount received pursuant to Section 33492.15, paragraph (4) of subdivision (a) of Section 33607.5, or Section 33607.7 of the Health and Safety Code that is allocated exclusively for educational facilities.

(i) This section shall become operative July 1, 1984.

SEC. 4. Section 42238.5 of the Education Code is amended to read:

42238.5. (a) For purposes of Section 42238, the fiscal year average daily attendance shall be computed pursuant to paragraph (1) or (2).

(1) The second principal apportionment regular average daily attendance for either the current or prior fiscal year, whichever is greater. However, prior fiscal year average daily attendance shall be adjusted for any loss or gain of average daily attendance due to a reorganization or transfer of territory, or, commencing in the 1993–94 fiscal year, and each fiscal year thereafter, for any change in average daily attendance for pupils who are concurrently enrolled in adult programs and classes pursuant to Section 52616.17.

(2) Any school district that elects to receive funding pursuant to Article 4 (commencing with Section 42280) shall compute its units of average daily attendance for purposes of Section 42238 by subtracting the amount determined in subparagraph (B) from the amount determined in subparagraph (A).

(A) The units of average daily attendance computed pursuant to paragraph (1).

(B) The units of average daily attendance resulting from pupils attending schools funded pursuant to Article 4 (commencing with Section 42280).

(b) For purposes of this article, regular average daily attendance shall be the base revenue limit average daily attendance, excluding summer school average daily attendance.

(c) For purposes of this section, for the 1998–99 fiscal year only, the prior year average daily attendance shall be the 1997–98 regular average daily attendance, excluding absences excused pursuant to subdivision (b) of Section 46010, as that subdivision read on July 1, 1996.

SEC. 5. Section 42238.7 of the Education Code is amended to read:

42238.7. The governing board of each school district, as a condition of apportionment, shall report to the Superintendent of Public Instruction, not later than May 1, 1998, and September 1, 1998, respectively, the portion of the attendance in the schools and classes maintained by the district that was reported for each of the 1996–97 and 1997–98 school years pursuant to Section 41601 that consisted of absences excused pursuant to subdivision (b) of Section 46010 and to Section 46015, as those sections read on July 1, 1996.

SEC. 6. Section 42238.8 of the Education Code is amended to read:

42238.8. (a) Effective July 1, 1998, the Superintendent of Public Instruction shall make a one-time adjustment to the revenue limit per unit of average daily attendance of each school district. This one-time adjustment shall apply for the 1998–99 fiscal year, and for each fiscal year thereafter, but not for any year prior to 1998–99, and shall be accomplished by revision of the prior fiscal year revenue limit per unit of average daily attendance, as follows:

(1) Determine a revised revenue limit per unit of average daily attendance for the 1996–97 fiscal year as follows:

(A) For each school district that had its revenue limit funding for the 1996–97 fiscal year calculated on the basis of its 1996–97 average daily attendance pursuant to paragraph (1) of subdivision (a) of Section 42238.5, the revised revenue limit per unit of average daily attendance shall equal the adjusted total base revenue limit determined pursuant to paragraph (2) divided by the adjusted average daily attendance determined pursuant to subparagraph (A) of paragraph (3).

(B) For each school district that had its revenue limit funding for the 1996–97 fiscal year calculated on the basis of its 1995–96 average daily attendance pursuant to paragraph (1) of subdivision (a) of Section 42238.5, the revised revenue limit per unit of average daily attendance shall equal the adjusted total base revenue limit determined pursuant to paragraph (2) divided by the adjusted average daily attendance determined pursuant to subparagraphs (B), (C), and (D) of paragraph (3).

(2) Determine the amount of the 1996–97 total base revenue limit funding received pursuant to Section 42238 for growth and nongrowth average daily attendance, including, as nongrowth average daily attendance, attendance in necessary small schools in the year determined to be the greater pursuant to paragraph (1) of subdivision (a) of Section 42238.5 for the 1996–97 fiscal year, but excluding attendance in nonpublic, nonsectarian schools, county office operated special education, and county community school programs.

(3) (A) Reduce the average daily attendance figure used to make the determination set forth in paragraph (2) by the amount of average daily attendance included in that figure for excused absences pursuant to subdivision (b) of Section 46010 as that subdivision read on July 1, 1996.

(B) Determine the second principal apportionment average daily attendance for the 1996–97 fiscal year, including attendance in necessary small schools and attendance for excused absences pursuant to subdivision (b) of Section 46010 as it read on July 1, 1996, but excluding attendance, including attendance for excused absences, in nonpublic, nonsectarian schools, county-operated special education programs, and county community schools.

(C) Determine the second principal apportionment average daily attendance for the 1996–97 fiscal year, including attendance in necessary small schools, but excluding attendance in nonpublic, nonsectarian schools, county-operated special education programs, and county community schools and for excused absences pursuant to subdivision (b) of Section 46010 as it read on July 1, 1996.

(D) Calculate the adjusted revenue limit average daily attendance by multiplying the average daily attendance figure used to make the determination set forth in paragraph (2) by the quotient of the amount determined pursuant to subparagraph (C) divided by the amount determined pursuant to subparagraph (B).

(4) Recalculate the 1997–98 fiscal year revenue limit per unit of average daily attendance to reflect the revision in the 1996–97 revenue limit per unit of average daily attendance determined pursuant to paragraph (1).

(b) The calculations made pursuant to paragraphs (1) and (4) of subdivision (a) shall not be used for apportionment purposes for either of the fiscal years referred to in those paragraphs or for adjustments for those years.

(c) If the governing board of any school district demonstrates to the satisfaction of the Superintendent of Public Instruction that, because of extraordinary circumstances beyond the control of the school district, the amount of absences excused in one or more district programs in fiscal year 1996–97 pursuant to subdivision (b) of Section 46010 as it read on July 1, 1996, was significantly lower than it would ordinarily have been in comparison to the amount of actual attendance in fiscal year 1996–97, the Superintendent of Public Instruction shall make a compensating adjustment, consistent with the provisions of Section 2 of the Education Code, in the calculation set forth in this section.

SEC. 7. Section 42238.9 of the Education Code is amended to read:

42238.9. The amount per unit of average daily attendance subtracted pursuant to Section 56712 for revenue limits for pupils in special classes and centers shall be the district's total revenue limit for the current fiscal year computed pursuant to Section 42238, including funds received pursuant to Article 4 (commencing with Section 42280), but excluding the total amount of funds received pursuant to Sections 46200 to 46206, inclusive, and Section 45023.4, as that section read on July 1, 1986, divided by the district's current year average daily attendance pursuant to Section 42238.5. The amount per unit of average daily attendance that is excluded in this calculation for each school district shall be increased for the 1998–99 fiscal year by the quotient for that district of the amount determined pursuant to subparagraph (B) of paragraph (3) of subdivision (a) of Section 42238.8 divided by the amount determined pursuant to subparagraph (C) of paragraph (3) of subdivision (a) of Section 42238.8.

SEC. 8. Section 42243.7 of the Education Code is amended to read:

42243.7. (a) For any school district that commenced operations on or after June 30, 1978, or for any school district that receives approval from the State Department of Education for a new continuation education high school for the 1979–80 fiscal year, or any fiscal year thereafter, the Superintendent of Public Instruction shall compute an adjustment to the district revenue limit pursuant to this section.

(b) Determine the amount of foundation program which the district would have been entitled to pursuant to subdivision (a) of Section 41711 if the district had operated during the 1977–78 fiscal year utilizing the number of units of average daily attendance attending high school in the district in the fiscal year for which the revenue limit is being computed.

(c) Determine the amount of foundation program which the district would have been entitled to pursuant to paragraph (1) of subdivision (b) of Section 41711 if the district had operated during

the 1977–78 fiscal year utilizing the same number of units of average daily attendance used in subdivision (b) of this section.

(d) Subtract the amount determined pursuant to subdivision (c) from the amount computed pursuant to subdivision (b).

(e) The amount computed pursuant to subdivision (d), if greater than zero, shall be added to the revenue limit computed pursuant to subdivision (c) of Section 42237 or pursuant to Section 42238. If the amount in subdivision (d) is less than zero there is no adjustment.

(f) The Superintendent of Public Instruction shall reduce by the amount computed pursuant to subdivision (e) the revenue limit computed pursuant to Section 42238 of any district discontinuing the operation of a continuation education school approved pursuant to subdivision (a).

(g) Commencing with the 1994–95 fiscal year and each fiscal year thereafter, the adjustment computed pursuant to this section shall not be adjusted by the deficit factor applied to the revenue limit of each school district pursuant to Section 42238.145.

(h) The adjustment computed pursuant to this section for a new continuation education high school may be applicable for any unified school district that was not fully operational during the first year of operation of the continuation education high school. The number of units of average daily attendance to be used in computing the adjustment shall be the number of units of average daily attendance generated by the continuation education high school in the district for the first year that the district is fully operational in all grades.

(i) In the 1998–99 fiscal year and each fiscal year thereafter, the ranges of average daily attendance resulting from the calculation set forth in this section pursuant to Section 41711, as that section read on July 1, 1977, shall be reduced by the statewide average percentage that absences excused pursuant to subdivision (b) of Section 46010, as that section read on July 1, 1996, were of total second principal apportionment regular average daily attendance for high schools in 1996–97, with the reduced ranges then rounded to the nearest integer.

SEC. 9. Section 42280 of the Education Code is amended to read:

42280. (a) For each school district that meets, in the current or prior fiscal year, the conditions specified in Section 42281, 42282, or 42284 the county superintendent of schools shall compute, for each qualifying school in the district, an amount pursuant to this article.

(b) For each school district that is a countywide unified school district that had fewer than 2,501 units of average daily attendance in the 1990–91 fiscal year, the county superintendent of schools shall compute an amount pursuant to this article for those schools that meet the conditions specified in Sections 42283 and 42285 in the current or prior fiscal year. This subdivision is only applicable to those schools funded pursuant to this article in the 1990–91 fiscal year and, in subsequent years, if the school district has no more than 3,000 units of average daily attendance.

(c) For the 1998–99 fiscal year, average daily attendance reported pursuant to Section 41601 for the 1997–98 fiscal year, exclusive of average daily attendance for absences excused pursuant to subdivision (b) of Section 46010 as that subdivision read on July 1, 1996, shall be used for the purpose of determining whether school districts meet the conditions in Sections 42281, 42282, and 42284 for the prior fiscal year.

SEC. 10. Section 42281 of the Education Code is amended to read:

42281. (a) Except as specified in paragraph (4), for each elementary school district that maintains only one school with a second principal apportionment average daily attendance of less than 101, the county superintendent shall make one of the following computations, whichever provides the lesser amount:

(1) For each small school that has an average daily attendance during the fiscal year of less than 26, exclusive of pupils attending the 7th and 8th grades of a junior high school, and for which school at least one teacher was hired full time, the county superintendent shall compute for the district fifty-two thousand nine hundred twenty-five dollars ($52,925).

(2) For each small school that has an average daily attendance during the fiscal year of 26 or more and less than 51, exclusive of pupils attending the 7th and 8th grades of a junior high school, and for which school at least two teachers were hired full time for more than one-half of the days schools were maintained, the county superintendent shall compute for the district one hundred five thousand eight hundred fifty dollars ($105,850).

(3) For each small school that has an average daily attendance during the fiscal year of 51 or more but less than 76, exclusive of pupils attending the 7th and 8th grades of a junior high school, and for which school three teachers were hired full time for more than one-half of the days schools were maintained, the county superintendent shall compute for the district one hundred fifty-eight thousand seven hundred seventy-five dollars ($158,775).

(4) For each small school that has an average daily attendance during the fiscal year of 76 or more and less than 101, exclusive of pupils attending the 7th and 8th grades of a junior high school, and for which school four teachers were hired full time for more than one-half of the days schools were maintained, the county superintendent shall compute for the district two hundred eleven thousand seven hundred dollars ($211,700). A school district that qualifies under this subdivision may use this funding calculation until the revenue limit per unit of average daily attendance multiplied by the average daily attendance produces state aid equal to the small school funding formula.

(b) For the 1998–99 fiscal year and each fiscal year thereafter, the average daily attendance figure of 101 specified in subdivision (a) and the ranges of average daily attendance specified in paragraphs (1) to (4), inclusive, shall be reduced by the statewide average rate

of excused absence reported for elementary school districts for the 1996–97 fiscal year pursuant to Section 42238.7, with the resultant figures and ranges rounded to the nearest integer.

SEC. 11. Section 42282 of the Education Code is amended to read:

42282. For each district with fewer than 2,501 units of second principal apportionment average daily attendance, on account of each necessary small school, the county superintendent shall make the following computations:

(a) For each necessary small school which has an average daily attendance during the fiscal year of less than 26, exclusive of pupils attending the 7th and 8th grades of a junior high school, and for which school at least one teacher was hired full time, the county superintendent shall compute for the district fifty-two thousand nine hundred twenty-five dollars ($52,925).

(b) For each necessary small school which has an average daily attendance during the fiscal year of 26 or more and less than 51, exclusive of pupils attending the 7th and 8th grades of a junior high school, and for which school at least two teachers were hired full time for more than one-half of the days schools were maintained, the county superintendent shall compute for the district one hundred five thousand eight hundred fifty dollars ($105,850).

(c) For each necessary small school which has an average daily attendance during the fiscal year of 51 or more but less than 76, exclusive of pupils attending the 7th and 8th grades of a junior high school, and for which school three teachers were hired full time for more than one-half of the days schools were maintained, the county superintendent shall compute for the district one hundred fifty-eight thousand seven hundred seventy-five dollars ($158,775).

(d) For each necessary small school which has an average daily attendance during the fiscal year of 76 or more and less than 101, exclusive of pupils attending the 7th and 8th grades of a junior high school, and for which school four teachers were hired full time for more than one-half of the days schools were maintained, the county superintendent shall compute for the district two hundred eleven thousand seven hundred dollars ($211,700). These school districts may use this funding calculation until the revenue limit per unit of average daily attendance multiplied by the average daily attendance produces state aid equal to the small school funding formula.

(e) For the 1998–99 fiscal year and each fiscal year thereafter, the ranges of average daily attendance specified in subdivisions (a) to (d), inclusive, shall be reduced by the statewide average rate of excused absence reported for high school districts for the 1996–97 fiscal year pursuant to Section 42238.7, with the resultant figures and ranges rounded to the nearest integer.

SEC. 12. Section 42283 of the Education Code is amended to read:

42283. (a) For the purposes of Section 42282, a "necessary small school" is an elementary school with an average daily attendance of less than 101, exclusive of pupils attending the seventh and eighth

grades of a junior high school, maintained by a school district which maintains two or more schools and to which school any of the following conditions apply:

(1) If as many as five pupils residing in the district and attending kindergarten and grades 1 to 8, inclusive, exclusive of pupils attending the seventh and eighth grades of a junior high school in the elementary school with an average daily attendance of less than 101 would be required to travel more than 10 miles one way from a point on a well-traveled road nearest their home to the nearest other public elementary school.

(2) If as many as 15 pupils residing in the district and attending kindergarten and grades 1 to 8, inclusive, exclusive of pupils attending the seventh and eighth grades of a junior high school in the elementary school with an average daily attendance of less than 101 would be required to travel more than five miles one way from a point on a well-traveled road nearest their home to the nearest other public elementary school.

(3) If topographical or other conditions exist in a district which would impose unusual hardships if the number of miles specified in paragraph (1) or (2) were required to be traveled, or if during the fiscal year the roads which would be traveled have been impassable for more than an average of two weeks per year for the preceding five years, the governing board of the district may, on or before April 1, request the Superintendent of Public Instruction, in writing, for an exemption from these requirements or for a reduction in the miles required. The request shall be accompanied by a statement of the conditions upon which the request is based, giving the information in a form required by the Superintendent of Public Instruction. The Superintendent of Public Instruction shall cause an investigation to be made, and shall either grant the request to the extent he or she deems necessary, or deny the request.

(b) For the 1998–99 fiscal year and each fiscal year thereafter, a "necessary small school," as defined in subdivision (a), shall be an elementary school with an average daily attendance of less than 101 reduced by the statewide average rate of excused absence reported for elementary school districts for the 1996–97 fiscal year pursuant to Section 42238.7, rounded to the nearest integer.

SEC. 13. Section 42284 of the Education Code is amended to read:

42284. (a) For each district with fewer than 2,501 units of average daily attendance, on account of each necessary small high school, the county superintendent of schools shall make one of the following computations selected with regard only to the number of certificated employees employed or average daily attendance, whichever provides the lesser amount:

Average daily attendance	Minimum number of certificated employees	Amount to be computed
1– 20	less than 3	$42,980 per teacher
1– 20	3	191,340
21– 40	4	234,320
41– 60	5	277,300
61– 75	6	320,280
76– 90	7	363,260
91–105	8	406,240
106–120	9	449,220
121–135	10	492,200
136–150	11	535,180
151–180	12	578,160
181–220	13	621,140
221–260	14	664,120
261–300	15	707,100

(b) For purposes of this section, a "certificated employee" means an equivalent full-time position of an individual holding a credential authorizing service and providing service in grades 9 to 12, inclusive, in any secondary school. Any fraction of an equivalent full-time position remaining after all equivalent full-time positions for certificated employees within the district have been calculated shall be deemed to be a full-time position.

(c) A school district that qualifies under this section may use the funding calculation as provided in this section until the revenue limit per unit of average daily attendance multiplied by the average daily attendance produces state aid equal to the funding provided under this section.

(d) For the 1998–99 fiscal year and each fiscal year thereafter, the ranges of average daily attendance specified in the table in subdivision (a) shall be reduced by the statewide average rate of excused absence reported for high school districts for the 1996–97 fiscal year pursuant to Section 42238.7, with the resultant ranges rounded to the nearest integer.

SEC. 14. Section 42285 of the Education Code is amended to read:

42285. (a) A necessary small high school for the purposes of Section 42284, is a high school with an average daily attendance of less than 301, excluding continuation schools, which comes within any of the following conditions (except that a single high school maintained by a unified district, or a high school maintained by any district for

the exclusive purpose of educating juvenile hall pupils or pupils with exceptional needs, shall be considered a necessary small high school):

(1) The projection of its future enrollment on the basis of the enrollment of the elementary schools in the district shows that within eight years the enrollment in high school in grades 9 to 12, inclusive, will exceed 300 pupils.

(2) Any one of the following combinations of distance and units of average daily attendance applies:

(A) The high school had an average daily attendance of less than 100 in grades 9 to 12, inclusive, during the preceding fiscal year and is more than 15 miles by well-traveled road from the nearest other public high school and either 90 percent of the pupils would be required to travel 20 miles or 25 percent of the pupils would be required to travel 30 miles one way from a point on a well-traveled road nearest their homes to the nearest other public high school.

(B) The high school had an average daily attendance of 100 or more and less than 150 in grades 9 to 12, inclusive, during the preceding fiscal year and is more than 10 miles by well-traveled road from the nearest other public high school and either 90 percent of the pupils would be required to travel 18 miles or 25 percent of the pupils would be required to travel 25 miles one way from a point on a well-traveled road nearest their homes to the nearest other public high school.

(C) The high school had an average daily attendance of 150 or more and less than 200 in grades 9 to 12, inclusive, during the preceding fiscal year and is more than $7^1/_2$ miles by well-traveled road from the nearest other public high school and either 90 percent of the pupils would be required to travel 15 miles or 25 percent of the pupils would be required to travel 20 miles one way from a point on a well-traveled road nearest their homes to the nearest other public high school.

(D) The high school had an average daily attendance of 200 or more and less than 300 in grades 9 to 12, inclusive, during the preceding fiscal year and is more than five miles by well-traveled road from the nearest other public high school and either 90 percent of the pupils would be required to travel 10 miles or 25 percent of the pupils would be required to travel 15 miles to the nearest other public high school.

(3) Topographical or other conditions exist in the district which would impose unusual hardships on the pupils if the number of miles specified above were required to be traveled. In these cases, the Superintendent of Public Instruction may, when requested, and after investigation, grant exceptions from the distance requirements.

(4) The Superintendent of Public Instruction has approved the recommendation of a county committee on school district organization designating one of two or more schools as necessary isolated schools in a situation where the schools are operated by two

or more districts and the average daily attendance of each of the schools is less than 300 in grades 9 to 12, inclusive.

(b) For the 1998–99 fiscal year and each fiscal year thereafter, the high school and junior high school average daily attendance figures specified in subdivision (a) and the ranges of average daily attendance specified in paragraph (2) of subdivision (a) shall be reduced by the statewide average rate of excused absence reported for high school districts for the 1996–97 fiscal year pursuant to Section 42238.7, with the resultant figures and ranges rounded to the nearest integer.

SEC. 15. Section 42289.5 is added to the Education Code, to read:

42289.5. Notwithstanding any other provision of law, the increases determined pursuant to Sections 42289, 42289.1, 42289.3, and 42289.4 shall be permanently increased for the 1998–99 fiscal year by the quotient, for each district eligible for an increase, of the amount determined pursuant to subparagraph (B) of paragraph (3) of subdivision (a) of Section 42238.8 divided by the amount determined pursuant to subparagraph (C) of paragraph (3) of subdivision (a) of Section 42238.8.

SEC. 16. Section 46010 of the Education Code, as amended by Chapter 855 of the Statutes 1997, is amended to read:

46010. The total days of attendance of a pupil upon the schools and classes maintained by a school district, or schools or classes maintained by the county superintendent of schools during the fiscal year shall be the number of days school was actually taught for not less than the minimum schooldays during the fiscal year less the sum of his or her absences.

SEC. 17. Section 48205 of the Education Code is amended to read:

48205. (a) Notwithstanding Section 48200, a pupil shall be excused from school when the absence is:

(1) Due to his or her illness.

(2) Due to quarantine under the direction of a county or city health officer.

(3) For the purpose of having medical, dental, optometrical, or chiropractic services rendered.

(4) For the purpose of attending the funeral services of a member of his or her immediate family, so long as the absence is not more than one day if the service is conducted in California and not more than three days if the service is conducted outside California.

(5) For the purpose of jury duty in the manner provided for by law.

(6) Due to the illness or medical appointment during school hours of a child of whom the pupil is the custodial parent.

(7) For justifiable personal reasons, including, but not limited to, an appearance in court, attendance at a funeral service, observance of a holiday or ceremony of his or her religion, attendance at religious retreats, or attendance at an employment conference, when the pupil's absence has been requested in writing by the parent or

guardian and approved by the principal or a designated representative pursuant to uniform standards established by the governing board.

(b) A pupil absent from school under this section shall be allowed to complete all assignments and tests missed during the absence that can be reasonably provided and, upon satisfactory completion within a reasonable period of time, shall be given full credit therefor. As the teacher of any class from which a pupil is absent shall determine the tests and assignments shall be reasonably equivalent to, but not necessarily identical to, the tests and assignments that the pupil missed during the absence.

(c) For purposes of this section, attendance at religious retreats shall not exceed four hours per semester.

(d) Absences pursuant to this section are deemed to be absences in computing average daily attendance and shall not generate state apportionment payments.

(e) "Immediate family," as used in this section, has the same meaning as that set forth in Section 45194, except that references therein to "employee" shall be deemed to be references to "pupil."

SEC. 18. Section 48664 of the Education Code is amended to read:

48664. (a) In addition to funds from all other sources, the Superintendent of Public Instruction shall apportion to each school district that operates a community day school one thousand five hundred dollars ($1,500) per year, for each unit of average daily attendance reported at the annual apportionment for pupil attendance at community day schools. Average daily attendance reported for this program shall not exceed 0.375 percent of a district's prior year P2 average daily attendance in an elementary school district, 0.5 percent of a district's prior year P2 average daily attendance in a unified school district, or 0.625 percent of a district's prior year P2 average daily attendance in a high school district. The Superintendent of Public Instruction may reallocate to any school district any unexpended balance of the appropriations made for the purposes of this subdivision for actual pupil attendance in excess of the percentage specified in this subdivision for the school district in an amount not to exceed one-half of that percentage. However, the average daily attendance generated by pupils expelled pursuant to subdivision (d) of Section 48915, shall not be subject to these percentage caps on average daily attendance.

(b) The average daily attendance of a community day school shall be determined by dividing the total number of days of attendance in all full school months, by a divisor of 70 in the first period of each fiscal year, by a divisor of 135 in the second period of each fiscal year, and by a divisor of 180 at the annual time of each fiscal year.

(c) The Superintendent of Public Instruction shall apportion to each school district that operates a community day school a sum equal to one dollar and forty cents ($1.40) multiplied by the total of the number of hours each schoolday, up to a maximum of two hours daily,

that each community day school pupil remains at the community day school under the supervision of a school district employee following completion of the full six-hour instructional day.

(d) It is the intent of the Legislature that districts enter into consortia, as feasible, for the purpose of providing community day school programs. Any school district with fewer than 2,501 units of average daily attendance may request a waiver for any fiscal year of the funding limitations defined in this section. The Superintendent of Public Instruction shall approve a waiver if he or she deems it necessary in order to permit the operation of a community day school of reasonably comparable quality to those offered in a school district with 2,501 or more units of average daily attendance. In no event shall the amount allocated pursuant to a waiver exceed the amount provided for one teacher pursuant to Section 42284, for pupils enrolled in kindergarten and grades 1 to 6, inclusive, or the amount provided for one teacher pursuant to Section 42284, for pupils enrolled in grades 7 to 12, inclusive. The provisions of this act shall not apply to any school district that applied for a waiver within the funding limits established by this subdivision but was denied funding or not fully funded.

(e) The State Department of Education shall evaluate and report to the appropriate legislative policy committees and budget committees on or before October 1, 1998, and for two years thereafter the following programmatic and fiscal issues:

(1) The number of expulsions statewide.

(2) The number of school districts operating community day schools.

(3) Status of the countywide plans as defined in Section 48926.

(4) An evaluation of the community day school average daily attendance funding percentage cap.

(5) Number of small school districts requesting and the number receiving a waiver under this section.

(6) The effect of hourly accounting under Section 48663 for purposes of receiving the additional funding under Section 48664.

(7) The number of pupils and average daily attendance served in community day programs, further identified as the number expelled pursuant to subdivision (b) of Section 48915, subdivision (d) of Section 48915, other expulsion criteria, or referred through a formal district process.

(8) Pupil outcome data and other data as required under Section 48916.1.

(9) Other programmatic or fiscal matters as determined by the State Department of Education.

(f) The additional funds provided in subdivisions (a), (c), and (d) shall only be allocated to the extent that funds are appropriated for this purpose in the annual Budget Act or other legislation, or both, except for pupils expelled pursuant to subdivision (d) of Section 48915. For pupils expelled pursuant to subdivision (d) of Section

48915, the funds apportioned under subdivision (a) are continuously appropriated from the General Fund to Section A of the State School Fund.

(g) A one-time adjustment shall be made to the amount specified in subdivision (a), for the 1998–99 fiscal year and subsequent fiscal years, by increasing that amount by the statewide average quotient resulting from dividing the average daily attendance specified in subparagraph (B) of paragraph (3) of subdivision (a) Section 42238.8 by the amount specified in subparagraph (C) of paragraph (3) of subdivision (a) of Section 42238.8.

SEC. 19. Section 48980 of the Education Code is amended to read:

48980. (a) At the beginning of the first semester or quarter of the regular school term, the governing board of each school district shall notify the parent or guardian of its minor pupils regarding the right or responsibility of the parent or guardian under Sections 35291, 46014, 48205, 48207, 48208, 49403, 49423, 49451, 49472, 51240, and 51550 and Chapter 2.3 (commencing with Section 32255) of Part 19.

(b) The notification also shall advise the parent or guardian of the availability of individualized instruction as prescribed by Section 48206.3, and of the program prescribed by Article 9 (commencing with Section 49510) of Chapter 9.

(c) The notification shall also advise the parents and guardians of all pupils attending a school within the district of the schedule of minimum days and pupil-free staff development days, and if any minimum or pupil-free staff development days are scheduled thereafter, the governing board shall notify parents and guardians of the affected pupils as early as possible, but not later than one month before the scheduled minimum or pupil-free day.

(d) The notification also may advise the parent or guardian of the importance of investing for future college or university education for their children and of considering appropriate investment options including, but not limited to, United States Savings Bonds.

(e) Each school district that elects to provide a fingerprinting program pursuant to Article 10 (commencing with Section 32390) shall inform parents or guardians of the program as specified in Section 32390.

(f) Until July 1, 1998, the notification shall also advise the parent or guardian of the availability of the employment-based school attendance options pursuant to subdivision (f) of Section 48204.

(g) The notification shall also include a copy of the district's written policy on sexual harassment established pursuant to Section 212.6, as it relates to pupils.

(h) Commencing July 1, 1998, the notification shall include a copy of the written policy of the school district adopted pursuant to Section 51870.5 regarding access by pupils to Internet and online sites.

(i) The notification shall advise the parent or guardian of all current statutory attendance options and local attendance options available in the school district. That notification shall include all

options for meeting residency requirements for school attendance, programmatic options offered within the local attendance areas, and any special programmatic options available on both an interdistrict and intradistrict basis. That notification shall also include a description of all options, a description of the procedure for application for alternative attendance areas or programs, an application form from the district for requesting a change of attendance, and a description of the appeals process available, if any, for a parent or guardian denied a change of attendance. The notification shall also include an explanation of the current statutory attendance options including, but not limited to, those available under Section 35160.5, Chapter 5 (commencing with Section 46600) of Part 26, subdivision (f) of Section 48204, and Article 1.5 (commencing with Section 48209) of Chapter 2 of Part 27. The State Department of Education shall produce this portion of the notification and shall distribute it to all school districts.

(j) It is the intent of the Legislature that the governing board of each school district annually review the enrollment options available to the pupils within their districts and that the school districts strive to make available enrollment options that meet the diverse needs, potential, and interests of California's pupils.

(k) The notification shall advise the parent or guardian that no pupil may have his or her grade reduced or lose academic credit for any absence or absences excused pursuant to Section 48205 when missed assignments and tests that can reasonably be provided are satisfactorily completed within a reasonable period of time, and shall include the full text of Section 48205.

SEC. 20. Section 49067 of the Education Code is amended to read:

49067. (a) The governing board of each school district shall prescribe regulations requiring the evaluation of each pupil's achievement for each marking period and requiring a conference with, or a written report to, the parent of each pupil whenever it becomes evident to the teacher that the pupil is in danger of failing a course. The refusal of the parent to attend the conference, or to respond to the written report, shall not preclude failing the pupil at the end of the grading period.

(b) The governing board of any school district may adopt regulations authorizing a teacher to assign a failing grade to any pupil whose absences from the teacher's class that are not excused pursuant to Section 48205 equal or exceed a maximum number which shall be specified by the board. Regulations adopted pursuant to this subdivision shall include, but not be limited to, the following:

(1) A reasonable opportunity for the pupil or the pupil's parent or guardian to explain the absences.

(2) A method for identification in the pupil's record of the failing grades assigned to the pupil on the basis of excessive unexcused absences.

(c) Notwithstanding the provisions of subdivision (a) of Section 49061, the provisions of this section shall apply to the parent or guardian of any pupil without regard to the age of the pupil.

SEC. 21. Section 52335.2 of the Education Code is amended to read:

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

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

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

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

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

(c) Multiply the amount computed pursuant to subdivision (a) by the lesser of the ROC/P's annual units of average daily attendance for the current fiscal year or the ROC/P's annual units of funded average daily attendance for the prior fiscal year.

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

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

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

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

(h) Before making the calculations described in subdivisions (c) and (d) to determine the amount to be apportioned to each ROC/P pursuant to subdivision (e) for the 1998–99 fiscal year, average daily attendance for the 1997–98 fiscal year shall be adjusted by a factor

equal to the number one minus the quotient of the number of units of that ROC/P's 1996–97 average daily attendance for absences excused pursuant to subdivision (b) of Section 46010, as that subdivision read on July 1, 1996, divided by that ROC/P's total 1996–97 average daily attendance.

SEC. 22. Section 56836.08 of the Education Code, as amended by Chapter 89 of the Statutes of 1998, is amended to read:

56836.08. (a) For the 1998–99 fiscal year, the superintendent shall make the following computations to determine the amount of funding for each special education local plan area:

(1) Add the amount of funding per unit of average daily attendance computed for the special education local plan area pursuant to paragraph (1) of subdivision (a) of Section 56836.10 to the inflation adjustment computed pursuant to subdivision (d) for the 1998–99 fiscal year.

(2) Multiply the amount computed in paragraph (1) by the units of average daily attendance reported for the special education local plan area for the 1997–98 fiscal year, exclusive of average daily attendance for absences excused pursuant to subdivision (b) of Section 46010, as that subdivision read on July 1, 1996.

(3) Add the actual amount of the equalization adjustment, if any, computed for the 1998–99 fiscal year pursuant to Section 56836.14 to the amount computed in paragraph (2).

(4) Add or subtract, as appropriate, the adjustment for growth computed pursuant to Section 56836.15 from the amount computed in paragraph (3).

(5) Add the special disabilities adjustment computed pursuant to Article 2.5 (commencing with Section 56836.155). The special disabilities adjustment received in the 1998–99 fiscal year shall not be included in the calculations made pursuant to paragraph (1) of subdivision (b) of Section 56836.10 for the 1999–2000 fiscal year.

(b) For the 1999–2000 fiscal year and each fiscal year thereafter, the superintendent shall make the following computations to determine the amount of funding for each special education local plan area for the fiscal year in which the computation is made:

(1) Add the amount of funding per unit of average daily attendance computed for the special education local plan area for the prior fiscal year pursuant to Section 56836.10 to the inflation adjustment computed pursuant to subdivision (d) for the fiscal year in which the computation is made.

(2) Multiply the amount computed in paragraph (1) by the units of average daily attendance reported for the special education local plan area for the prior fiscal year.

(3) Add the actual amount of the equalization adjustment, if any, computed for the special education local plan area for the fiscal year in which the computation is made pursuant to Section 56836.14 to the amount computed in paragraph (2).

(4) Add or subtract, as appropriate, the adjustment for growth or decline in enrollment, if any, computed for the special education local plan area for the fiscal year in which the computation is made pursuant to Section 56836.15 from the amount computed in paragraph (3).

(5) Add the special disabilities adjustment computed pursuant to Article 2.5 (commencing with Section 56836.155) and increased pursuant to subparagraph (D) if the adjusted funding per unit of average daily attendance of the special education local plan area is below the statewide target amount per unit of average daily attendance as determined pursuant to subparagraphs (A) to (C), inclusive, as follows:

(A) Calculate the adjusted amount of funding per unit of average daily attendance for each special education local plan area, measured in dollars and cents, using the methodology contained in subdivision (a) of Section 56836.10, except that the amount used from the computation in Section 56836.09 shall be reduced by the amount computed pursuant to Article 2.5 (commencing with Section 56836.155).

(B) Determine the statewide target amount per unit of average daily attendance, measured in dollars and cents and rounded up to the nearest 50 cents ($0.50), as computed pursuant to subdivision (a) of Section 56836.11.

(C) The adjusted funding per unit of average daily attendance is below the statewide target amount if the amount calculated pursuant to subparagraph (A), subtracted from the amount calculated pursuant to subparagraph (B), yields a positive value.

(D) If the computation made pursuant to subparagraph (C) yields a positive value, increase the special disabilities adjustment in the 1999–2000 fiscal year and each year thereafter by the percent increase in growth in average daily attendance reported by the special education local plan area and the inflation factor computed pursuant to subdivision (b) of Section 42238.1 for the applicable fiscal year.

(E) Inclusion of the special disabilities adjustment in the total funding of a special education local plan area shall neither change nor be included in the computation of equalization funding pursuant to Section 56836.12 or the computations made after this computation that precede the computation in Section 56836.12.

(F) This paragraph shall not apply to the special education local plan area identified as the Los Angeles County Juvenile Court and Community School/Division of Alternative Education Special Education Local Plan Area.

(c) For the 1998–99 fiscal year and each fiscal year thereafter, the superintendent shall make the following computations to determine the amount of General Fund moneys that the special education local plan area may claim:

(1) Add the total of the amount of property taxes for the special education local plan area pursuant to Section 2572 for the fiscal year in which the computation is made to the amount of federal funds allocated for the purposes of paragraphs (1) and (2) of subdivision (a) of Section 56836.09 for the fiscal year in which the computation is made.

(2) Add the amount of funding computed for the special education local plan area pursuant to subdivision (a) for the 1998–99 fiscal year, and commencing with the 1999–2000 fiscal year and each fiscal year thereafter, the amount computed for the fiscal year in which the computations were made pursuant to subdivision (b) to the amount of funding computed for the special education local plan area pursuant to Article 3 (commencing with Section 56836.16).

(3) Subtract the sum computed in paragraph (1) from the sum computed in paragraph (2).

(d) For the 1998–99 fiscal year and each fiscal year thereafter, the superintendent shall make the following computations to determine the inflation adjustment for the fiscal year in which the computation is made:

(1) For the 1998–99 fiscal year, multiply the statewide target amount per unit of average daily attendance for special education local plan areas for the 1997–98 fiscal year computed pursuant to paragraph (3) of Section 56836.11 by the inflation factor computed pursuant to subdivision (b) of Section 42238.1 for the 1998–99 fiscal year.

(2) For the 1999–2000 fiscal year and each fiscal year thereafter, multiply the statewide target amount per unit of average daily attendance for special education local plan areas for the prior fiscal year computed pursuant to Section 56836.11 by the inflation factor computed pursuant to subdivision (b) of Section 42238.1 for the fiscal year in which the computation is made.

(3) For the purposes of computing the inflation adjustment for the special education local plan area identified as the Los Angeles County Juvenile Court and Community School/Division of Alternative Education Special Education Local Plan Area for the 1998–99 fiscal year and each fiscal year thereafter, the superintendent shall multiply the amount of funding per unit of average daily attendance computed for that special education local plan area for the prior fiscal year pursuant to Section 56836.10 by the inflation factor computed pursuant to subdivision (b) of Section 42238.1 for the fiscal year in which the computation is being made.

SEC. 22.5. Section 56836.08 of the Education Code, as amended by Chapter 89 of the Statutes of 1998, is amended to read:

56836.08. (a) For the 1998–99 fiscal year, the superintendent shall make the following computations to determine the amount of funding for each special education local plan area:

(1) Add the amount of funding per unit of average daily attendance computed for the special education local plan area

pursuant to paragraph (1) of subdivision (a) of Section 56836.10 to the inflation adjustment computed pursuant to subdivision (d) for the 1998–99 fiscal year.

(2) Multiply the amount computed in paragraph (1) by the units of average daily attendance reported for the special education local plan area for the 1997–98 fiscal year, exclusive of average daily attendance for absences excused pursuant to subdivision (b) of Section 46010, as that subdivision read on July 1, 1996.

(3) Add the actual amount of the equalization adjustment, if any, computed for the 1998–99 fiscal year pursuant to Section 56836.14 to the amount computed in paragraph (2).

(4) Add or subtract, as appropriate, the adjustment for growth computed pursuant to Section 56836.15 from the amount computed in paragraph (3).

(b) For the 1999–2000 fiscal year and each fiscal year thereafter, the superintendent shall make the following computations to determine the amount of funding for each special education local plan area for the fiscal year in which the computation is made:

(1) Add the amount of funding per unit of average daily attendance computed for the special education local plan area for the prior fiscal year pursuant to Section 56836.10 to the inflation adjustment computed pursuant to subdivision (d) for the fiscal year in which the computation is made.

(2) Multiply the amount computed in paragraph (1) by the units of average daily attendance reported for the special education local plan area for the prior fiscal year.

(3) Add the actual amount of the equalization adjustment, if any, computed for the special education local plan area for the fiscal year in which the computation is made pursuant to Section 56836.14 to the amount computed in paragraph (2).

(4) Add or subtract, as appropriate, the adjustment for growth or decline in enrollment, if any, computed for the special education local plan area for the fiscal year in which the computation is made pursuant to Section 56836.15 from the amount computed in paragraph (3).

(c) For the 1998–99 fiscal year and each fiscal year thereafter, the superintendent shall make the following computations to determine the amount of General Fund moneys that the special education local plan area may claim:

(1) Add the total of the amount of property taxes for the special education local plan area pursuant to Section 2572 for the fiscal year in which the computation is made to the amount of federal funds allocated for the purposes of paragraph (1) of subdivision (a) of Section 56836.09 for the fiscal year in which the computation is made.

(2) Add the amount of funding computed for the special education local plan area pursuant to subdivision (a) for the 1998–99 fiscal year, and commencing with the 1999–2000 fiscal year and each fiscal year thereafter, the amount computed for the fiscal year in

which the computations were made pursuant to subdivision (b) to the amount of funding computed for the special education local plan area pursuant to Article 3 (commencing with Section 56836.16).

(3) Subtract the sum computed in paragraph (1) from the sum computed in paragraph (2).

(d) For the 1998–99 fiscal year and each fiscal year thereafter, the superintendent shall make the following computations to determine the inflation adjustment for the fiscal year in which the computation is made:

(1) For the 1998–99 fiscal year, multiply the sum of the statewide target amount per unit of average daily attendance for special education local plan areas for the 1997–98 fiscal year computed pursuant to paragraph (3) of subdivision (a) of Section 56836.11 and the amount determined pursuant to paragraph (e) of Section 56836.155 for the 1997–98 fiscal year by the inflation factor computed pursuant to subdivision (b) of Section 42238.1 for the 1998–99 fiscal year.

(2) For the 1999–2000 fiscal year and each fiscal year thereafter, multiply the sum of the statewide target amount per unit of average daily attendance for special education local plan areas for the prior fiscal year computed pursuant to Section 56836.11 and the amount determined pursuant to paragraph (3) of subdivision (d) of Section 56836.155 for the prior fiscal year by the inflation factor computed pursuant to subdivision (b) of Section 42238.1 for the fiscal year in which the computation is made.

(3) For the purposes of computing the inflation adjustment for the special education local plan area identified as the Los Angeles County Juvenile Court and Community School/Division of Alternative Education Special Education Local Plan Area for the 1998–99 fiscal year and each fiscal year thereafter, the superintendent shall multiply the amount of funding per unit of average daily attendance computed for that special education local plan area for the prior fiscal year pursuant to Section 56836.10 by the inflation factor computed pursuant to subdivision (b) of Section 42238.1 for the fiscal year in which the computation is being made.

(e) For the 1998–99 fiscal year and each fiscal year thereafter to and including the 2002–03 fiscal year, the superintendent shall perform the calculation set forth in Section 56836.155 to determine the adjusted entitlement for the incidence of disabilities for each special education local plan area, but this amount shall not be used in the next fiscal year to determine the base amount of funding for each special education local plan area for the current fiscal year, except as specified in this article.

SEC. 23. Section 56836.10 of the Education Code is amended to read:

56836.10. (a) The superintendent shall make the following computations to determine the amount of funding per unit of

average daily attendance for each special education local plan area for the 1998–99 fiscal year:

(1) Divide the amount of funding for the special education local plan area computed for the 1997–98 fiscal year pursuant to Section 56836.09 by the number of units of average daily attendance, exclusive of average daily attendance for absences excused pursuant to subdivision (b) of Section 46010 as that subdivision read on July 1, 1997, reported for the special education local plan area for the 1997–98 fiscal year.

(2) Add the amount computed in paragraph (1) to the inflation adjustment computed pursuant to subdivision (d) of Section 56836.08 for the 1998–99 fiscal year.

(b) Commencing with the 1999–2000 fiscal year and each fiscal year thereafter, the superintendent shall make the following computations to determine the amount of funding per unit of average daily attendance for each special education local plan area for the fiscal year in which the computation is made:

(1) For the 1999–2000 fiscal year, divide the amount of funding for the special education local plan area computed for the 1998–99 fiscal year pursuant to subdivision (a) of Section 56836.08 by the number of units of average daily attendance reported for the special education local plan area for the 1998–99 fiscal year.

(2) For the 2000–01 fiscal year, and each fiscal year thereafter, divide the amount of funding for the special education local plan area computed for the prior fiscal year pursuant to subdivision (b) of Section 56836.08 by the number of units of average daily attendance reported for the special education local plan area for the prior fiscal year.

SEC. 24. Section 56836.11 of the Education Code is amended to read:

56836.11. (a) For the purpose of computing the equalization adjustment for special education local plan areas for the 1998–99 fiscal year, the superintendent shall make the following computations to determine the statewide target amount per unit of average daily attendance for special education local plan areas:

(1) Total the amount of funding computed for each special education local plan area pursuant to Section 56836.09 for the 1997–98 fiscal year.

(2) Total the number of units of average daily attendance reported for each special education local plan area for the 1997–98 fiscal year, exclusive of average daily attendance for absences excused pursuant to subdivision (b) of Section 46010 as that section read on July 1, 1996.

(3) Divide the sum computed in paragraph (1) by the sum computed in paragraph (2) to determine the statewide target amount for the 1997–98 fiscal year.

(4) Add the amount computed in paragraph (3) to the inflation adjustment computed pursuant to subdivision (d) of Section 56836.08

for the 1998–99 fiscal year to determine the statewide target amount for the 1998–99 fiscal year.

(b) Commencing with the 1999–2000 fiscal year and each fiscal year thereafter, to determine the statewide target amount per unit of average daily attendance for special education local plan areas, the superintendent shall multiply the statewide target amount per unit of average daily attendance computed for the prior fiscal year pursuant to this section by one plus the inflation factor computed pursuant to subdivision (b) of Section 42238.1 for the fiscal year in which the computation is made.

SEC. 25. Section 56836.12 of the Education Code, as amended by Chapter 89 of the Statutes of 1998, is amended to read:

56836.12. (a) For the purpose of computing the equalization adjustment for special education local plan areas for the 1998–99 fiscal year, the superintendent shall make the following computations to determine the amount that each special education local plan area that has an amount per unit of average daily attendance that is below the statewide target amount per unit of average daily attendance may request as an equalization adjustment:

(1) Subtract the amount per unit of average daily attendance computed for the special education local plan area pursuant to subdivision (a) of Section 56836.10 from the statewide target amount per unit of average daily attendance determined pursuant to subdivision (a) of Section 56836.11.

(2) If the remainder computed in paragraph (1) is greater than zero, multiply that remainder by the number of units of average daily attendance reported for the special education local plan area for the 1997–98 fiscal year, exclusive of average daily attendance for absences excused pursuant to subdivision (b) of Section 46010, as that section read on July 1, 1996.

(b) Commencing with the 1999–2000 fiscal year, through and including the fiscal year in which equalization among the special education local plan areas has been achieved, the superintendent shall make the following computations to determine the amount that each special education local plan area that has an amount per unit of average daily attendance that is below the statewide target amount per unit of average daily attendance may request as an equalization adjustment:

(1) Add to the amount per unit of average daily attendance computed for the special education local plan area pursuant to subdivision (b) of Section 56836.10 for the fiscal year in which the computation is made the inflation adjustment computed pursuant to subdivision (d) of Section 56836.08 for the fiscal year in which the computation is made.

(2) Subtract the amount computed pursuant to paragraph (1) from the statewide target amount per unit of average daily attendance computed pursuant to subdivision (b) of Section 56836.11 for the fiscal year in which the computation is made.

(3) If the remainder computed in paragraph (2) is greater than zero, multiply that remainder by the number of units of average daily attendance reported for the special education local plan area for the prior fiscal year, exclusive of average daily attendance for absences excused pursuant to subdivision (b) of Section 46010, as that section read on July 1, 1996.

(c) This section shall not apply to the special education local plan area identified as the Los Angeles County Juvenile Court and Community School/Division of Alternative Education Special Education Local Plan Area.

SEC. 26. Section 56836.15 of the Education Code, as amended by Chapter 89 of the Statutes of 1998, is amended to read:

56836.15. (a) In order to mitigate the effects of any declining enrollment, commencing in the 1998–99 fiscal year, and each fiscal year thereafter, the superintendent shall calculate allocations to special education local plan areas based on the average daily attendance reported for the special education local plan area for the fiscal year in which the computation is made or the prior fiscal year, whichever is greater. However, the prior fiscal year average daily attendance reported for the special education local plan area shall be adjusted for any loss or gain of average daily attendance reported for the special education local plan area due to a reorganization or transfer of territory in the special education local plan area.

(b) For the 1998–99 fiscal year only, the prior year average daily attendance used in this section shall be the 1997–98 average daily attendance reported for the special education local plan area, exclusive of average daily attendance for absences excused pursuant to subdivision (b) of Section 46010, as that section read on July 1, 1996.

(c) If in the fiscal year for which the computation is made, the number of units of average daily attendance upon which allocations to the special education local plan area are based is greater than the number of units of average daily attendance upon which allocations to the special education local plan area were based in the prior fiscal year, the special education local plan area shall be allocated a growth adjustment equal to the product determined by multiplying the amounts determined under paragraphs (1) and (2).

(1) The statewide target amount per unit of average daily attendance for special education local plan areas determined pursuant to Section 56836.11.

(2) The difference between the number of units of average daily attendance upon which allocations to the special education local plan area are based for the fiscal year in which the computation is made and the number of units of average daily attendance upon which allocations to the special education local plan area were based for the prior fiscal year.

(d) If in the fiscal year for which the computation is made, the number of units of average daily attendance upon which allocations to the special education local plan area are based is less than the

number of units of average daily attendance upon which allocations to the special education local plan area were based in the prior fiscal year, the special education local plan area shall receive a funding reduction equal to the product determined by multiplying the amounts determined under paragraphs (1) and (2):

(1) The amount of funding per unit of average daily attendance computed for the special education local plan area for the prior fiscal year.

(2) The difference between the number of units of average daily attendance upon which allocations to the special education local plan area are based for the fiscal year in which the computation is made and the number of units of average daily attendance upon which allocations to the special education local plan area were based for the prior fiscal year.

(e) If, in the fiscal year for which the computation is made, the number of units of average daily attendance upon which the allocations to the special education local plan area identified as the Los Angeles County Juvenile Court and Community School/Division of Alternative Education Special Education Local Plan Area are based is greater than the number of units of average daily attendance upon which the allocations to that special education local plan area were based in the prior fiscal year, that special education local plan area shall be allocated a growth adjustment equal to the product determined by multiplying the amounts determined under paragraphs (1) and (2).

(1) The amount of funding per unit of average daily attendance computed for the special education local plan area for the prior fiscal year pursuant to Section 56836.10 multiplied by one plus the inflation adjustment factor computed pursuant to subdivision (b) of Section 42238.1 for the fiscal year in which the computation is being made.

(2) The difference between the number of units of average daily attendance upon which allocations to the special education local plan area are based for the fiscal year in which the computation is made and the number of units of average daily attendance upon which allocations to the special education local plan area were based for the prior fiscal year.

SEC. 26.5. Section 56836.15 of the Education Code, as amended by Chapter 89 of the Statutes of 1998, is amended to read:

56836.15. (a) In order to mitigate the effects of any declining enrollment, commencing in the 1998–99 fiscal year, and each fiscal year thereafter, the superintendent shall calculate allocations to special education local plan areas based on the average daily attendance reported for the special education local plan area for the fiscal year in which the computation is made or the prior fiscal year, whichever is greater. However, the prior fiscal year average daily attendance reported for the special education local plan area shall be adjusted for any loss or gain of average daily attendance reported for

the special education local plan area due to a reorganization or transfer of territory in the special education local plan area.

(b) For the 1998–99 fiscal year only, the prior year average daily attendance used in this section shall be the 1997–98 average daily attendance reported for the special education local plan area, exclusive of average daily attendance for absences excused pursuant to subdivision (b) of Section 46010, as that section read on July 1, 1996.

(c) If in the fiscal year for which the computation is made, the number of units of average daily attendance upon which allocations to the special education local plan area are based is greater than the number of units of average daily attendance upon which allocations to the special education local plan area were based in the prior fiscal year, the special education local plan area shall be allocated a growth adjustment equal to the product determined by multiplying the amounts determined under paragraphs (1) and (2).

(1) The statewide target amount per unit of average daily attendance for special education local plan areas determined pursuant to Section 56836.11, added to the amount determined in paragraph (3) of subdivision (d) of Section 56836.155.

(2) The difference between the number of units of average daily attendance upon which allocations to the special education local plan area are based for the fiscal year in which the computation is made and the number of units of average daily attendance upon which allocations to the special education local plan area were based for the prior fiscal year.

(d) If in the fiscal year for which the computation is made, the number of units of average daily attendance upon which allocations to the special education local plan area are based is less than the number of units of average daily attendance upon which allocations to the special education local plan area were based in the prior fiscal year, the special education local plan area shall receive a funding reduction equal to the product determined by multiplying the amounts determined under paragraphs (1) and (2):

(1) The amount of funding per unit of average daily attendance computed for the special education local plan area for the prior fiscal year.

(2) The difference between the number of units of average daily attendance upon which allocations to the special education local plan area are based for the fiscal year in which the computation is made and the number of units of average daily attendance upon which allocations to the special education local plan area were based for the prior fiscal year.

(e) If, in the fiscal year for which the computation is made, the number of units of average daily attendance upon which the allocations to the special education local plan area identified as the Los Angeles County Juvenile Court and Community School/Division of Alternative Education Special Education Local Plan Area are based is greater than the number of units of average daily attendance

upon which the allocations to that special education local plan area were based in the prior fiscal year, that special education local plan area shall be allocated a growth adjustment equal to the product determined by multiplying the amounts determined under paragraphs (1) and (2).

(1) The amount of funding per unit of average daily attendance computed for the special education local plan area for the prior fiscal year pursuant to Section 56836.10 multiplied by one plus the inflation adjustment factor computed pursuant to subdivision (b) of Section 42238.1 for the fiscal year in which the computation is being made.

(2) The difference between the number of units of average daily attendance upon which allocations to the special education local plan area are based for the fiscal year in which the computation is made and the number of units of average daily attendance upon which allocations to the special education local plan area were based for the prior fiscal year.

SEC. 27. Section 56836.24 of the Education Code is amended to read:

56836.24. Commencing with the 1998–99 fiscal year and each year thereafter, the superintendent shall make the following computations to determine the amount of funding for the purposes specified in Section 56836.23 to apportion to each special education local plan area for the fiscal year in which the computation is made:

(a) For the 1998–99 fiscal year the superintendent shall make the following computations:

(1) Multiply the total amount of state General Fund money allocated to the special education local plan areas in the 1997–98 fiscal year, for the purposes of Article 9 (commencing with Section 56780) of Chapter 7, as that chapter existed on December 31, 1998, by one plus the inflation factor computed pursuant to subdivision (b) of Section 42238.1 for the 1998–99 fiscal year.

(2) Divide the amount calculated in paragraph (1) by the units of average daily attendance, exclusive of average daily attendance for absences excused pursuant to subdivision (b) of Section 46010 as that subdivision read on July 1, 1997, reported for the special education local plan area for the 1997–98 fiscal year.

(3) To determine the amount to be allocated to each special education local plan area in the 1998–99 fiscal year, the superintendent shall multiply the amount computed in paragraph (2) by the number of units of average daily attendance reported for the special education local plan area for the 1998–99 fiscal year, except that a special education local plan area designated as a necessary small special education local plan area in accordance with Section 56212 and reporting fewer than 15,000 units of average daily attendance for the 1998–99 fiscal year shall be deemed to have 15,000 units of average daily attendance, and no special education local plan area shall receive less than it received in the 1997–98 fiscal year.

(b) For the 1999–2000 fiscal year and each fiscal year thereafter, the superintendent shall make the following calculations:

(1) Multiply the amount determined in paragraph (2) of subdivision (a) by one plus the inflation factor computed pursuant to subdivision (b) of Section 42238.1 for the current fiscal year.

(2) Multiply the amount determined in paragraph (1) by the number of units of average daily attendance reported for the special education local plan area for the current fiscal year, except that a special education local plan area designated as a necessary small special education local plan area in accordance with Section 56212 and reporting fewer than 15,000 units of average daily attendance for the current fiscal year shall be deemed to have 15,000 units of average daily attendance.

SEC. 28. Section 8880.5 of the Government Code is amended to read:

8880.5. Allocations for education:

The California State Lottery Education Fund is created within the State Treasury, and is continuously appropriated for carrying out the purposes of this chapter. The Controller shall draw warrants on this fund and distribute them quarterly in the following manner, provided that the payments specified in subdivisions (a) to (h), inclusive, shall be equal per capita amounts.

(a) Payments shall be made directly to public school districts, including county superintendents of schools, serving kindergarten and grades 1 to 12, inclusive, or any part thereof, on the basis of an equal amount for each unit of average daily attendance, as defined by law and adjusted pursuant to subdivision (m).

(b) Payments shall also be made directly to public school districts serving community colleges, on the basis of an equal amount for each unit of average daily attendance, as defined by law.

(c) Payments shall also be made directly to the Board of Trustees of the California State University on the basis of an amount for each unit of equivalent full-time enrollment. Funds received by the trustees shall be deposited in and expended from the California State University Lottery Education Fund which is hereby created.

(d) Payments shall also be made directly to the Regents of the University of California on the basis of an amount for each unit of equivalent full-time enrollment.

(e) Payments shall also be made directly to the Board of Directors of the Hastings College of the Law on the basis of an amount for each unit of equivalent full-time enrollment.

(f) Payments shall also be made directly to the California Maritime Academy Board of Governors on the basis of an amount for each unit of equivalent full-time enrollment.

(g) Payments shall also be made directly to the Department of the Youth Authority for educational programs serving kindergarten and grades 1 to 12, inclusive, or any part thereof, on the basis of an equal amount for each unit of average daily attendance, as defined by law.

(h) Payments shall also be made directly to the two California Schools for the Deaf, the California School for the Blind, and the three Diagnostic Schools for Neurologically Handicapped Children, on the basis of an amount for each unit of equivalent full-time enrollment.

(i) Payments shall also be made directly to the State Department of Developmental Services and the State Department of Mental Health for clients with developmental or mental disabilities who are enrolled in state hospital education programs, including developmental centers, on the basis of an equal amount for each unit of average daily attendance, as defined by law.

(j) No Budget Act or other statutory provision shall direct that payments for public education made pursuant to this chapter be used for purposes and programs (including workload adjustments and maintenance of the level of service) authorized by Chapters 498, 565, and 1302 of the Statutes of 1983, Chapter 97 or 258 of the Statutes of 1984, or Chapter 1 of the Statutes of the 1983–84, Second Extraordinary Session.

(k) School districts and other agencies receiving funds distributed pursuant to this chapter may at their option utilize funds allocated by this chapter to provide additional funds for those purposes and programs prescribed by subdivision (j) for the purpose of enrichment or expansion.

(*l*) As a condition of receiving any moneys pursuant to subdivision (a) or (b), each district and county superintendent of schools shall establish a separate account for the receipt and expenditure of those moneys, which account shall be clearly identified as a lottery education account.

(m) Commencing with the 1998–99 fiscal year, and each year thereafter, for the purposes of subdivision (a), average daily attendance shall be increased by the statewide average rate of excused absences for the 1996–97 fiscal year as determined pursuant to the provisions of Chapter 855 of the Statutes of 1997. The statewide average excused absence rate, and the corresponding adjustment factor required for the operation of this subdivision, shall be certified to the State Controller by the Superintendent of Public Instruction.

(n) It is the intent of this chapter that all funds allocated from the California State Lottery Education Fund shall be used exclusively for the education of pupils and students and no funds shall be spent for acquisition of real property, construction of facilities, financing of research, or any other noninstructional purpose.

SEC. 29. The Legislature finds and declares that Section 28 of this act furthers the purposes of the California State Lottery Act of 1984.

SEC. 30. 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. 30.4. Section 22.5 of this bill incorporates amendments to Section 56836.08 of the Education Code proposed by both this bill and Senate Bill 1564. 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 56836.08 of the Education Code, and (3) this bill is enacted after Senate Bill 1564, in which case Section 56836.08 of the Education Code, as amended by Senate Bill 1564, shall remain operative only until the operative date of this bill, at which time Section 22.5 of this bill shall become operative, and Section 22 of this bill shall not become operative.

SEC. 30.6. Section 26.5 of this bill incorporates amendments to Section 56836.15 of the Education Code proposed by both this bill and Senate Bill 1564. 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 56836.15 of the Education Code, and (3) this bill is enacted after Senate Bill 1564, in which case Section 56836.15 of the Education Code, as amended by Senate Bill 1564, shall remain operative only until the operative date of this bill, at which time Section 26.5 of this bill shall become operative, and Section 26 of this bill shall not become operative.

SEC. 31. 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 compile and review school attendance information in a timely manner and to make important statutory changes relating to school finance for the 1998–99 fiscal year, it is necessary that this act go into effect immediately.

CHAPTER 847

An act to amend Sections 48662, 48663, and 48664 of, and to add Sections 48660.2 and 48667 to, the Education Code, relating to community day schools.

[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 48660.2 is added to the Education Code, to read:

48660.2. (a) Notwithstanding any other provision of law, and as a condition of receiving apportionments under this article, school districts operating one or more community day schools shall annually report to the Superintendent of Public Instruction, on forms approved by the State Board of Education, the direct instructional costs and documented support costs of their community day schools, using definitions included in the California School Accounting Manual, Part I, as it read on July 1, 1997, except that districts may include in these reports the costs of rents and leases for facilities used by community day schools and maintenance and operations costs for facilities used by community day schools. Each school district that has received approval from the State Department of Education to use the standardized account code structure may satisfy the requirement set forth in this subdivision by reporting the direct costs of the community day school program, and shall maintain documentation of all noninstructional costs charged to the community day school program.

(b) The Superintendent of Public Instruction shall do each of the following:

(1) Multiply the total of all funds received by each school district on behalf of pupils while enrolled in community day schools by 0.9.

(2) Subtract the total of each school district's costs for community day schools, as determined pursuant to subdivision (a), from the amount determined pursuant to paragraph (1).

(3) If the amount determined pursuant to paragraph (2) for a school district is positive, the Superintendent of Public Instruction shall subtract that amount from the school district's next apportionment.

SEC. 2. Section 48662 of the Education Code is amended to read:

48662. (a) The governing board of a school district that establishes a community day school shall adopt policies that provide procedures for the involuntary transfer of pupils to a community day school.

(b) A pupil may be assigned to a community day school only if he or she meets one or more of the following conditions:

(1) The pupil is expelled for any reason.

(2) The pupil is probation referred pursuant to Sections 300 and 602 of the Welfare and Institutions Code.

(3) The pupil is referred to a community day school by a school attendance review board or other district level referral process.

(4) First priority for assignment to a community day school shall be given to a pupil expelled pursuant to subdivision (d) of Section 48915, second priority shall be given to pupils expelled for any other reasons, and third priority shall be given for placement to all other

pupils pursuant to this section, unless there is an agreement that the county superintendent of schools shall serve any of these pupils.

SEC. 3. Section 48663 of the Education Code is amended to read:

48663. (a) The minimum schoolday in a community day school is 360 minutes of classroom instruction provided by a certificated employee of the district reporting the attendance of the pupils for apportionment funding.

(b) A pupil enrolled in a community day school may not generate more than one day of community day school attendance credit in a schoolday for any purpose.

(c) For the purposes of calculating the additional funding provided to a school district pursuant to Section 48664, only community day school attendance shall be reported in clock hours. Attendance of less than five clock hours in a schoolday shall be disregarded for purposes of Section 48664. Five clock hours of attendance in one schoolday shall be deemed to be one-half day of attendance, for purposes of additional funding pursuant to Section 48664. Six clock hours or more of attendance in one schoolday shall be deemed to be one day of attendance, for purposes of additional funding pursuant to Section 48664.

(d) Independent study may not be utilized as a means of providing any part of the minimum instructional day provided pursuant to subdivision (a).

(e) A community day school's academic programs shall be comparable to those available to pupils of a similar age in the school district.

SEC. 4. Section 48664 of the Education Code is amended to read:

48664. (a) (1) In addition to funds from all other sources, the Superintendent of Public Instruction shall apportion to each school district that operates a community day school four thousand dollars ($4,000) per year, and for each county office of education that operates a community day school three thousand dollars ($3,000) per year, for each unit of average daily attendance reported at the annual apportionment for pupil attendance at community day schools. Average daily attendance reported for this program shall not exceed 0.375 percent of a district's prior year P2 average daily attendance in an elementary school district, 0.5 percent of a district's prior year P2 average daily attendance in a unified school district, or 0.625 percent of a district's prior year P2 average daily attendance in a high school district. The units of average daily attendance of a community day school operated by a county office of education shall not exceed the unused units of average daily attendance of the community day schools operated by the school districts within the jurisdiction of that county office of education.

(2) The Superintendent of Public Instruction may reallocate to any school district any unexpended balance of the appropriations made for the purposes of this subdivision for actual pupil attendance in excess of the percentage specified in this subdivision for the school

district in an amount not to exceed one-half of that percentage. However, the average daily attendance generated by pupils expelled pursuant to subdivision (d) of Section 48915, shall not be subject to these percentage caps on average daily attendance.

(b) The average daily attendance of a community day school shall be determined by dividing the total number of days of attendance in all full school months, by a divisor of 70 in the first period of each fiscal year, by a divisor of 135 in the second period of each fiscal year, and by a divisor of 180 at the annual time of each fiscal year.

(c) The Superintendent of Public Instruction shall apportion to each school district that operates a community day school an amount equal to four dollars ($4), multiplied by the total of the number of hours each schoolday, up to a maximum of two hours daily, that each community day school pupil remains at the community day school under the supervision of an employee of the school district, or a consortium of school districts pursuant to Section 48916.1, reporting the attendance of the pupils for apportionment funding following completion of the full six-hour instructional day.

(d) It is the intent of the Legislature that districts enter into consortia, as feasible, for the purpose of providing community day school programs. Any school district with fewer than 2,501 units of average daily attendance may request a waiver for any fiscal year of the funding limitations set forth in this section. The Superintendent of Public Instruction shall approve a waiver if he or she deems it necessary in order to permit the operation of a community day school of reasonably comparable quality to those offered in a school district with 2,501 or more units of average daily attendance. In no event shall the amount allocated pursuant to a waiver exceed the amount provided for one teacher pursuant to Section 42284, for pupils enrolled in kindergarten and grades 1 to 6, inclusive, or the amount provided for one teacher pursuant to Section 42284, for pupils enrolled in grades 7 to 12, inclusive. The provisions of this act shall not apply to any school district that applied for a waiver within the funding limits established by this subdivision but was denied funding or not fully funded.

(e) The State Department of Education shall evaluate and report to the appropriate legislative policy committees and budget committees on or before October 1, 1998, and for two years thereafter the following programmatic and fiscal issues:

(1) The number of expulsions statewide.

(2) The number of school districts operating community day schools.

(3) Status of the countywide plans as defined in Section 48926.

(4) An evaluation of the community day school average daily attendance funding percentage cap.

(5) Number of small school districts requesting and the number receiving a waiver under this section.

(6) The effect of hourly accounting under Section 48663 for purposes of receiving the additional funding under Section 48664.

(7) The number of pupils and average daily attendance served in community day programs, further identified as the number expelled pursuant to subdivision (d) of Section 48915, subdivision (b) of Section 48915, other expulsion criteria, or referred through a formal district process.

(8) Pupil outcome data and other data as required under Section 48916.1.

(9) Other programmatic or fiscal matters as determined by the State Department of Education.

(f) The additional funds provided in subdivisions (a), (c), and (d) shall only be allocated to the extent that funds are appropriated for this purpose in the annual Budget Act or other legislation, or both, except for pupils expelled pursuant to subdivision (d) of Section 48915. For pupils expelled pursuant to subdivision (d) of Section 48915, the funds apportioned under subdivision (a) are continuously appropriated from the General Fund to Section A of the State School Fund.

SEC. 5. Section 48664 of the Education Code is amended to read:

48664. (a) (1) In addition to funds from all other sources, the Superintendent of Public Instruction shall apportion to each school district that operates a community day school four thousand dollars ($4,000) per year, and for each county office of education that operates a community day school three thousand dollars ($3,000) per year, for each unit of average daily attendance reported at the annual apportionment for pupil attendance at community day schools. Average daily attendance reported for this program shall not exceed 0.375 percent of a district's prior year P2 average daily attendance in an elementary school district, 0.5 percent of a district's prior year P2 average daily attendance in a unified school district, or 0.625 percent of a district's prior year P2 average daily attendance in a high school district. The units of average daily attendance of a community day school operated by a county office of education shall not exceed the unused units of average daily attendance of the community day schools operated by the school districts within the jurisdiction of that county office of education.

(2) The Superintendent of Public Instruction may reallocate to any school district any unexpended balance of the appropriations made for the purposes of this subdivision for actual pupil attendance in excess of the percentage specified in this subdivision for the school district in an amount not to exceed one-half of that percentage. However, the average daily attendance generated by pupils expelled pursuant to subdivision (d) of Section 48915, shall not be subject to these percentage caps on average daily attendance.

(b) The average daily attendance of a community day school shall be determined by dividing the total number of days of attendance in all full school months, by a divisor of 70 in the first period of each fiscal

year, by a divisor of 135 in the second period of each fiscal year, and by a divisor of 180 at the annual time of each fiscal year.

(c) The Superintendent of Public Instruction shall apportion to each school district that operates a community day school an amount equal to four dollars ($4), multiplied by the total of the number of hours each schoolday, up to a maximum of two hours daily, that each community day school pupil remains at the community day school under the supervision of an employee of the school district, or a consortium of school districts pursuant to Section 48916.1, reporting the attendance of the pupils for apportionment funding following completion of the full six-hour instructional day.

(d) It is the intent of the Legislature that districts enter into consortia, as feasible, for the purpose of providing community day school programs. Any school district with fewer than 2,501 units of average daily attendance may request a waiver for any fiscal year of the funding limitations set forth in this section. The Superintendent of Public Instruction shall approve a waiver if he or she deems it necessary in order to permit the operation of a community day school of reasonably comparable quality to those offered in a school district with 2,501 or more units of average daily attendance. In no event shall the amount allocated pursuant to a waiver exceed the amount provided for one teacher pursuant to Section 42284, for pupils enrolled in kindergarten and grades 1 to 6, inclusive, or the amount provided for one teacher pursuant to Section 42284, for pupils enrolled in grades 7 to 12, inclusive. The provisions of this act shall not apply to any school district that applied for a waiver within the funding limits established by this subdivision but was denied funding or not fully funded.

(e) The State Department of Education shall evaluate and report to the appropriate legislative policy committees and budget committees on or before October 1, 1998, and for two years thereafter the following programmatic and fiscal issues:

(1) The number of expulsions statewide.

(2) The number of school districts operating community day schools.

(3) Status of the countywide plans as defined in Section 48926.

(4) An evaluation of the community day school average daily attendance funding percentage cap.

(5) Number of small school districts requesting and the number receiving a waiver under this section.

(6) The effect of hourly accounting under Section 48663 for purposes of receiving the additional funding under Section 48664.

(7) The number of pupils and average daily attendance served in community day programs, further identified as the number expelled pursuant to subdivision (b) of Section 48915, subdivision (d) of Section 48915, other expulsion criteria, or referred through a formal district process.

(8) Pupil outcome data and other data as required under Section 48916.1.

(9) Other programmatic or fiscal matters as determined by the State Department of Education.

(f) The additional funds provided in subdivisions (a) (c), and (d) shall only be allocated to the extent that funds are appropriated for this purpose in the annual Budget Act or other legislation, or both, except for pupils expelled pursuant to subdivision (d) of Section 48915. For pupils expelled pursuant to subdivision (d) of Section 48915, the funds apportioned under subdivision (a) are continuously appropriated from the General Fund to Section A of the State School Fund.

(g) A one-time adjustment shall be made to the amount specified in subdivision (a), for the 1998–99 fiscal year and subsequent fiscal years, by increasing that amount by the statewide average quotient resulting from dividing the average daily attendance specified in subparagraph (B) of paragraph (3) of subdivision (a) of Section 42238.8 by the amount specified in subparagraph (C) of paragraph (3) of subdivision (a) of Section 42238.8.

SEC. 6. Section 48667 is added to the Education Code, to read:

48667. (a) For the purposes of this article, each county office of education shall be deemed to be a school district.

(b) The Superintendent of Public Instruction shall use the revenue limit per unit of average daily attendance of the statewide average juvenile court school revenue limit per unit of average daily attendance for a community day school operated by a county office of education.

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

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

SEC. 8. Section 5 of this bill incorporates amendments to Section 48664 of the Education Code proposed by both this bill and SB 1468. 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 48664 of the Education Code, and (3) this bill is enacted after SB 1468, in which case Section 48664 of the Education Code, as amended by SB 1468, shall remain operative only until the operative

date of this bill, at which time Section 5 of this bill shall become operative, and Section 4 of this bill shall not become operative.

CHAPTER 848

An act to amend Section 17089.2 of the Education Code, relating to portable classrooms.

[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 17089.2 of the Education Code is amended to read:

17089.2. Any portable classroom that is leased from the board by a school district or county superintendent of schools under this chapter on or prior to December 1, 1991, may be purchased by that district or county superintendent of schools for an amount equal to the purchase price paid by the board, including the purchase costs specified in subdivision (c) of Section 17088.7, less the amount of any rent already paid to the board by the district or county superintendent of schools for that classroom. Payment for purchases made pursuant to this section shall be in equal annual installments for an agreed upon term not to exceed nine years.

CHAPTER 849

An act to add Section 4420.5 to the Government Code, relating to public construction.

[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. It is the intent of the Legislature to lower construction related costs and risks through the controlled use of owner-controlled or wrap-up insurance.

SEC. 2. Section 4420.5 is added to the Government Code, to read:

4420.5. (a) Subdivision (b) of Section 4420 does not apply to any construction or renovation project undertaken by a school district.

(b) The district may use owner-controlled or wrap-up insurance with regard to a construction or renovation project if the district makes the following determinations:

(1) Prospective bidders, including contractors and subcontractors, meet minimum occupational safety and health qualifications established to bid on the project. The evaluation of prospective bidders shall be based on consideration of the following factors:

(A) Serious and willful violations of Part 1 (commencing with Section 6300) of Division 5 of the Labor Code, by a contractor or subcontractor during the past five-year period.

(B) The contractor's or subcontractor's workers' compensation experience modification factor.

(C) A contractor's or subcontractor's injury prevention program instituted pursuant to Section 3201.5 or 6401.7 of the Labor Code.

(2) The use of owner-controlled or wrap-up insurance will maximize the expenditure of public funds on the project in conjunction with the exercise of appropriate risk management.

(c) 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.

(d) Any use of owner-controlled or wrap-up insurance pursuant to this section shall be subject to subparagraphs (B), (C), (D), and (E) of paragraph (1) of subdivision (d) of Section 4420 and paragraphs (2) and (3) of that subdivision.

CHAPTER 850

An act to amend Section 422.6 of the Penal Code, relating to civil rights.

[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 422.6 of the Penal Code is amended to read:

422.6. (a) No person, whether or not acting under color of law, shall by force or threat of force, willfully injure, intimidate, interfere with, oppress, or threaten any other person in the free exercise or enjoyment of any right or privilege secured to him or her by the Constitution or laws of this state or by the Constitution or laws of the United States because of the other person's race, color, religion, ancestry, national origin, disability, gender, or sexual orientation, or because he or she perceives that the other person has one or more of those characteristics.

(b) No person, whether or not acting under color of law, shall knowingly deface, damage, or destroy the real or personal property of any other person for the purpose of intimidating or interfering

with the free exercise or enjoyment of any right or privilege secured to the other person by the Constitution or laws of this state or by the Constitution or laws of the United States, because of the other person's race, color, religion, ancestry, national origin, disability, gender, or sexual orientation, or because he or she perceives that the other person has one or more of those characteristics.

(c) Any person convicted of violating subdivision (a) or (b) shall be punished 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 imprisonment and fine, and the court shall order the defendant to perform a minimum of community service, not to exceed 400 hours, to be performed over a period not to exceed 350 days, during a time other than his or her hours of employment or school attendance. However, no person shall be convicted of violating subdivision (a) based upon speech alone, except upon a showing that the speech itself threatened violence against a specific person or group of persons and that the defendant had the apparent ability to carry out the threat.

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 851

An act to amend, repeal, and add Section 594 of the Penal Code, relating to vandalism.

[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 594 of the Penal Code is amended to read:

594. (a) Every person who maliciously commits any of the following acts with respect to any real or personal property not his or her own, in cases other than those specified by state law, is guilty of vandalism:

(1) Defaces with graffiti or other inscribed material.

(2) Damages.

(3) Destroys.

Whenever a person violates this subdivision with respect to real property, vehicles, signs, fixtures, or furnishings belonging to any public entity, as defined by Section 811.2 of the Government Code, or the federal government, it shall be a permissive inference that the person neither owned the property nor had the permission of the owner to deface, damage, or destroy the property.

(b) (1) If the amount of defacement, damage, or destruction is fifty thousand dollars ($50,000) or more, vandalism is punishable by imprisonment in the state prison or in a county jail not exceeding one year, or by a fine of not more than fifty thousand dollars ($50,000), or by both that fine and imprisonment.

(2) If the amount of defacement, damage, or destruction is five thousand dollars ($5,000) or more but less than fifty thousand dollars ($50,000), vandalism is punishable by imprisonment in the state prison, or in a county jail not exceeding one year, or by a fine of not more than ten thousand dollars ($10,000), or by both that fine and imprisonment.

(3) If the amount of defacement, damage, or destruction is four hundred dollars ($400) or more but less than five thousand dollars ($5,000), vandalism is punishable by imprisonment in a county jail not exceeding one year, or by a fine of five thousand dollars ($5,000), or by both that fine and imprisonment.

(4) If the amount of defacement, damage, or destruction is less than four hundred dollars ($400), vandalism is punishable by imprisonment in a county jail for not more than six months, or by a fine of not more than one thousand dollars ($1,000), or by both that fine and imprisonment.

(c) (1) Upon conviction of any person under this section for acts of vandalism consisting of defacing property with graffiti or other inscribed materials, the court may, in addition to any punishment imposed under subdivision (b), order the defendant to clean up, repair, or replace the damaged property himself or herself, or, if the jurisdiction has adopted a graffiti abatement program, order the defendant, and his or her parents or guardians if the defendant is a minor, to keep the damaged property or another specified property in the community free of graffiti for up to one year. Participation of a parent or guardian is not required under this subdivision if the court deems this participation to be detrimental to the defendant, or if the parent or guardian is a single parent who must care for young children.

(2) Any city, county, or city and county may enact an ordinance that provides all of the following:

(A) Upon conviction of any person pursuant to this section for acts of vandalism, the court may, in addition to any punishment imposed under subdivision (b), provided that the court determines that the defendant has the ability to pay any law enforcement costs not

exceeding two hundred fifty dollars ($250), order the defendant to pay all or part of the costs not to exceed two hundred fifty dollars ($250) incurred by a law enforcement agency in identifying and apprehending the defendant. The law enforcement agency shall provide evidence of, and bear the burden of establishing, the reasonable costs that it incurred in identifying and apprehending the defendant.

(B) The law enforcement costs authorized to be paid pursuant to this subdivision are in addition to any other costs incurred or recovered by the law enforcement agency, and payment of these costs does not in any way limit, preclude, or restrict any other right, remedy, or action otherwise available to the law enforcement agency.

(d) If a minor is personally unable to pay a fine levied for acts prohibited by this section, the parent of that minor shall be liable for payment of the fine. A court may waive payment of the fine or any part thereof by the parent upon a finding of good cause.

(e) As used in this section, the term "graffiti or other inscribed material" includes any unauthorized inscription, word, figure, mark, or design that is written, marked, etched, scratched, drawn, or painted on real or personal property.

(f) As used in this section, "graffiti abatement program" means a program adopted by a city, county, or city and county by resolution or ordinance that provides for the administration and financing of graffiti removal, community education on the prevention of graffiti, and enforcement of graffiti laws.

(g) The court may order any person ordered to perform community service or graffiti removal pursuant to paragraph (1) of subdivision (c) to undergo counseling.

(h) No amount paid by a defendant in satisfaction of a criminal matter shall be applied in satisfaction of the law enforcement costs that may be imposed pursuant to this section until all outstanding base fines, state and local penalty assessments, restitution orders, and restitution fines have been paid.

(i) This section shall remain in effect 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. 1.1. Section 594 of the Penal Code is amended to read:

594. (a) Every person who maliciously commits any of the following acts with respect to any real or personal property not his or her own, in cases other than those specified by state law, is guilty of vandalism:

(1) Defaces with graffiti or other inscribed material.

(2) Damages.

(3) Destroys.

Whenever a person violates this subdivision with respect to real property, vehicles, signs, fixtures, or furnishings belonging to any public entity, as defined by Section 811.2 of the Government Code,

or the federal government, it shall be a permissive inference that the person neither owned the property nor had the permission of the owner to deface, damage, or destroy the property.

(b) (1) If the amount of defacement, damage, or destruction is fifty thousand dollars ($50,000) or more, vandalism is punishable by imprisonment in the state prison or in a county jail not exceeding one year, or by a fine of not more than fifty thousand dollars ($50,000), or by both that fine and imprisonment.

(2) If the amount of defacement, damage, or destruction is five thousand dollars ($5,000) or more but less than fifty thousand dollars ($50,000), vandalism is punishable by imprisonment in the state prison, or in a county jail not exceeding one year, or by a fine of not more than ten thousand dollars ($10,000), or by both that fine and imprisonment.

(3) If the amount of defacement, damage, or destruction is four hundred dollars ($400) or more but less than five thousand dollars ($5,000), vandalism is punishable by imprisonment in a county jail not exceeding one year, or by a fine of five thousand dollars ($5,000), or by both that fine and imprisonment.

(4) (A) If the amount of defacement, damage, or destruction is less than four hundred dollars ($400), vandalism is punishable by imprisonment in a county jail for not more than six months, or by a fine of not more than one thousand dollars ($1,000), or by both that fine and imprisonment.

(B) If the amount of defacement, damage, or destruction is less than four hundred dollars ($400), and the defendant has been previously convicted of vandalism or affixing graffiti or other inscribed material under Section 594, 594.3, 594.4, 640.5, 640.6, or 640.7, vandalism is punishable by imprisonment in a county jail for not more than one year, or by a fine of not more than five thousand dollars ($5,000) or by both that fine and imprisonment.

(c) (1) Upon conviction of any person under this section for acts of vandalism consisting of defacing property with graffiti or other inscribed materials, the court may, in addition to any punishment imposed under subdivision (b), order the defendant to clean up, repair, or replace the damaged property himself or herself, or, if the jurisdiction has adopted a graffiti abatement program, order the defendant, and his or her parents or guardians if the defendant is a minor, to keep the damaged property or another specified property in the community free of graffiti for up to one year. Participation of a parent or guardian is not required under this subdivision if the court deems this participation to be detrimental to the defendant, or if the parent or guardian is a single parent who must care for young children.

(2) Any city, county, or city and county may enact an ordinance that provides all of the following:

(A) Upon conviction of any person pursuant to this section for acts of vandalism, the court may, in addition to any punishment imposed

under subdivision (b), provided that the court determines that the defendant has the ability to pay any law enforcement costs not exceeding two hundred fifty dollars ($250), order the defendant to pay all or part of the costs not to exceed two hundred fifty dollars ($250) incurred by a law enforcement agency in identifying and apprehending the defendant. The law enforcement agency shall provide evidence of, and bear the burden of establishing, the reasonable costs that it incurred in identifying and apprehending the defendant.

(B) The law enforcement costs authorized to be paid pursuant to this subdivision are in addition to any other costs incurred or recovered by the law enforcement agency, and payment of these costs does not in any way limit, preclude, or restrict any other right, remedy, or action otherwise available to the law enforcement agency.

(d) If a minor is personally unable to pay a fine levied for acts prohibited by this section, the parent of that minor shall be liable for payment of the fine. A court may waive payment of the fine or any part thereof by the parent upon a finding of good cause.

(e) As used in this section, the term "graffiti or other inscribed material" includes any unauthorized inscription, word, figure, mark, or design that is written, marked, etched, scratched, drawn, or painted on real or personal property.

(f) As used in this section, "graffiti abatement program" means a program adopted by a city, county, or city and county by resolution or ordinance that provides for the administration and financing of graffiti removal, community education on the prevention of graffiti, and enforcement of graffiti laws.

(g) The court may order any person ordered to perform community service or graffiti removal pursuant to paragraph (1) of subdivision (c) to undergo counseling.

(h) No amount paid by a defendant in satisfaction of a criminal matter shall be applied in satisfaction of the law enforcement costs that may be imposed pursuant to this section until all outstanding base fines, state and local penalty assessments, restitution orders, and restitution fines have been paid.

(i) This section shall remain in effect until January 1, 2002, and as of that date is repealed, unless a later enacted statute that is enacted before January 1, 2002, deletes or extends that date.

SEC. 2. Section 594 is added to the Penal Code, to read:

594. (a) Every person who maliciously commits any of the following acts with respect to any real or personal property not his or her own, in cases other than those specified by state law, is guilty of vandalism:

(1) Defaces with graffiti or other inscribed material.

(2) Damages.

(3) Destroys.

Whenever a person violates this subdivision with respect to real property, vehicles, signs, fixtures, or furnishings belonging to any public entity, as defined by Section 811.2 of the Government Code, or the federal government, it shall be a permissive inference that the person neither owned the property nor had the permission of the owner to deface, damage, or destroy the property.

(b) (1) If the amount of defacement, damage, or destruction is fifty thousand dollars ($50,000) or more, vandalism is punishable by imprisonment in the state prison or in a county jail not exceeding one year, or by a fine of not more than fifty thousand dollars ($50,000), or by both that fine and imprisonment.

(2) If the amount of defacement, damage, or destruction is five thousand dollars ($5,000) or more but less than fifty thousand dollars ($50,000), vandalism is punishable by imprisonment in the state prison, or in a county jail not exceeding one year, or by a fine of not more than ten thousand dollars ($10,000), or by both that fine and imprisonment.

(3) If the amount of defacement, damage, or destruction is four hundred dollars ($400) or more but less than five thousand dollars ($5,000), vandalism is punishable by imprisonment in a county jail not exceeding one year, or by a fine of five thousand dollars ($5,000), or by both that fine and imprisonment.

(4) If the amount of defacement, damage, or destruction is less than four hundred dollars ($400), vandalism is punishable by imprisonment in a county jail for not more than six months, or by a fine of not more than one thousand dollars ($1,000), or by both that fine and imprisonment.

(c) Upon conviction of any person under this section for acts of vandalism consisting of defacing property with graffiti or other inscribed materials, the court may, in addition to any punishment imposed under subdivision (b), order the defendant to clean up, repair, or replace the damaged property himself or herself, or, if the jurisdiction has adopted a graffiti abatement program, order the defendant, and his or her parents or guardians if the defendant is a minor, to keep the damaged property or another specified property in the community free of graffiti for up to one year. Participation of a parent or guardian is not required under this subdivision if the court deems this participation to be detrimental to the defendant, or if the parent or guardian is a single parent who must care for young children.

(d) If a minor is personally unable to pay a fine levied for acts prohibited by this section, the parent of that minor shall be liable for payment of the fine. A court may waive payment of the fine or any part thereof by the parent upon a finding of good cause.

(e) As used in this section, the term "graffiti or other inscribed material" includes any unauthorized inscription, word, figure, mark, or design that is written, marked, etched, scratched, drawn, or painted on real or personal property.

(f) As used in this section, "graffiti abatement program" means a program adopted by a city, county, or city and county by resolution or ordinance that provides for the administration and financing of graffiti removal, community education on the prevention of graffiti, and enforcement of graffiti laws.

(g) The court may order any person ordered to perform community service or graffiti removal pursuant to subdivision (c) to undergo counseling.

(h) This section shall become operative on January 1, 2002.

SEC. 2.1. Section 594 is added to the Penal Code, to read:

594. (a) Every person who maliciously commits any of the following acts with respect to any real or personal property not his or her own, in cases other than those specified by state law, is guilty of vandalism:

(1) Defaces with graffiti or other inscribed material.

(2) Damages.

(3) Destroys.

Whenever a person violates this subdivision with respect to real property, vehicles, signs, fixtures, or furnishings belonging to any public entity, as defined by Section 811.2 of the Government Code, or the federal government, it shall be a permissive inference that the person neither owned the property nor had the permission of the owner to deface, damage, or destroy the property.

(b) (1) If the amount of defacement, damage, or destruction is fifty thousand dollars ($50,000) or more, vandalism is punishable by imprisonment in the state prison or in a county jail not exceeding one year, or by a fine of not more than fifty thousand dollars ($50,000), or by both that fine and imprisonment.

(2) If the amount of defacement, damage, or destruction is five thousand dollars ($5,000) or more but less than fifty thousand dollars ($50,000), vandalism is punishable by imprisonment in the state prison, or in a county jail not exceeding one year, or by a fine of not more than ten thousand dollars ($10,000), or by both that fine and imprisonment.

(3) If the amount of defacement, damage, or destruction is four hundred dollars ($400) or more but less than five thousand dollars ($5,000), vandalism is punishable by imprisonment in a county jail not exceeding one year, or by a fine of five thousand dollars ($5,000), or by both that fine and imprisonment.

(4) (A) If the amount of defacement, damage, or destruction is less than four hundred dollars ($400), vandalism is punishable by imprisonment in a county jail for not more than six months, or by a fine of not more than one thousand dollars ($1,000), or by both that fine and imprisonment.

(B) If the amount of defacement, damage, or destruction is less than four hundred dollars ($400), and the defendant has been previously convicted of vandalism or affixing graffiti or other inscribed material under Section 594, 594.3, 594.4, 640.5, 640.6, or

640.7, vandalism is punishable by imprisonment in a county jail for not more than one year, or by a fine of not more than five thousand dollars ($5,000) or by both that fine and imprisonment.

(c) Upon conviction of any person under this section for acts of vandalism consisting of defacing property with graffiti or other inscribed materials, the court may, in addition to any punishment imposed under subdivision (b), order the defendant to clean up, repair, or replace the damaged property himself or herself, or, if the jurisdiction has adopted a graffiti abatement program, order the defendant, and his or her parents or guardians if the defendant is a minor, to keep the damaged property or another specified property in the community free of graffiti for up to one year. Participation of a parent or guardian is not required under this subdivision if the court deems this participation to be detrimental to the defendant, or if the parent or guardian is a single parent who must care for young children.

(d) If a minor is personally unable to pay a fine levied for acts prohibited by this section, the parent of that minor shall be liable for payment of the fine. A court may waive payment of the fine or any part thereof by the parent upon a finding of good cause.

(e) As used in this section, the term "graffiti or other inscribed material" includes any unauthorized inscription, word, figure, mark, or design that is written, marked, etched, scratched, drawn, or painted on real or personal property.

(f) As used in this section, "graffiti abatement program" means a program adopted by a city, county, or city and county by resolution or ordinance that provides for the administration and financing of graffiti removal, community education on the prevention of graffiti, and enforcement of graffiti laws.

(g) The court may order any person ordered to perform community service or graffiti removal pursuant to subdivision (c) to undergo counseling.

(h) This section shall become operative on January 1, 2002.

SEC. 3. Section 1.1 of this bill incorporates amendments to Section 594 of the Penal Code proposed by this bill, AB 1386, and SB 1229. It shall only become operative if (1) both this bill and either of the other two bills are enacted and become effective on or before January 1, 1999, (2) both this bill and either of the other two bills amend Section 594 of the Penal Code, and (3) this bill is enacted after either AB 1386 or SB 1229, in which case Section 1 of this bill shall not become operative.

SEC. 4. Section 2.1 of this bill incorporates amendments to Section 594 of the Penal Code proposed by AB 1386 and SB 1229. It shall only become operative if (1) both this bill and either of the other two bills are enacted and become effective on or before January 1, 1999, (2) either of the other two bills amend Section 594 of the Penal

Code, and (3) this bill is enacted after either AB 1386 or SB 1229, in which case Section 2 of this bill shall not become operative.

CHAPTER 852

An act to amend Sections 594.6 and 640.7 of, and to amend, repeal, and add Section 594 of, and to amend, repeal, and add Section 594 of, the Penal Code, relating to vandalism.

[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 594 of the Penal Code is amended to read:

594. (a) Every person who maliciously commits any of the following acts with respect to any real or personal property not his or her own, in cases other than those specified by state law, is guilty of vandalism:

(1) Defaces with graffiti or other inscribed material.

(2) Damages.

(3) Destroys.

Whenever a person violates this subdivision with respect to real property, vehicles, signs, fixtures, or furnishings belonging to any public entity, as defined by Section 811.2 of the Government Code, or the federal government, it shall be a permissive inference that the person neither owned the property nor had the permission of the owner to deface, damage, or destroy the property.

(b) (1) If the amount of defacement, damage, or destruction is fifty thousand dollars ($50,000) or more, vandalism is punishable by imprisonment in the state prison or in a county jail not exceeding one year, or by a fine of not more than fifty thousand dollars ($50,000), or by both that fine and imprisonment.

(2) If the amount of defacement, damage, or destruction is five thousand dollars ($5,000) or more but less than fifty thousand dollars ($50,000), vandalism is punishable by imprisonment in the state prison, or in a county jail not exceeding one year, or by a fine of not more than ten thousand dollars ($10,000), or by both that fine and imprisonment.

(3) If the amount of defacement, damage, or destruction is four hundred dollars ($400) or more but less than five thousand dollars ($5,000), vandalism is punishable by imprisonment in a county jail not exceeding one year, or by a fine of five thousand dollars ($5,000), or by both that fine and imprisonment.

(4) (A) If the amount of defacement, damage, or destruction is less than four hundred dollars ($400), vandalism is punishable by imprisonment in a county jail for not more than six months, or by a

fine of not more than one thousand dollars ($1,000), or by both that fine and imprisonment.

(B) If the amount of defacement, damage, or destruction is less than four hundred dollars ($400), and the defendant has been previously convicted of vandalism or affixing graffiti or other inscribed material under Section 594, 594.3, 594.4, 640.5, 640.6, or 640.7, vandalism is punishable by imprisonment in a county jail for not more than one year, or by a fine of not more than five thousand dollars ($5,000) or by both that fine and imprisonment.

(c) Upon conviction of any person under this section for acts of vandalism consisting of defacing property with graffiti or other inscribed materials, the court may, in addition to any punishment imposed under subdivision (b), order the defendant to clean up, repair, or replace the damaged property himself or herself, or, if the jurisdiction has adopted a graffiti abatement program, order the defendant, and his or her parents or guardians if the defendant is a minor, to keep the damaged property or another specified property in the community free of graffiti for up to one year. Participation of a parent or guardian is not required under this subdivision if the court deems this participation to be detrimental to the defendant, or if the parent or guardian is a single parent who must care for young children.

(d) If a minor is personally unable to pay a fine levied for acts prohibited by this section, the parent of that minor shall be liable for payment of the fine. A court may waive payment of the fine or any part thereof by the parent upon a finding of good cause.

(e) As used in this section, the term "graffiti or other inscribed material" includes any unauthorized inscription, word, figure, mark, or design that is written, marked, etched, scratched, drawn, or painted on real or personal property.

(f) As used in this section, "graffiti abatement program" means a program adopted by a city, county, or city and county by resolution or ordinance that provides for the administration and financing of graffiti removal, community education on the prevention of graffiti, and enforcement of graffiti laws.

(g) The court may order any person ordered to perform community service or graffiti removal pursuant to subdivision (c) to undergo counseling.

SEC. 1.1. Section 594 of the Penal Code is amended to read:

594. (a) Every person who maliciously commits any of the following acts with respect to any real or personal property not his or her own, in cases other than those specified by state law, is guilty of vandalism:

(1) Defaces with graffiti or other inscribed material.

(2) Damages.

(3) Destroys.

Whenever a person violates this subdivision with respect to real property, vehicles, signs, fixtures, or furnishings belonging to any

public entity, as defined by Section 811.2 of the Government Code, or the federal government, it shall be a permissive inference that the person neither owned the property nor had the permission of the owner to deface, damage, or destroy the property.

(b) (1) If the amount of defacement, damage, or destruction is fifty thousand dollars ($50,000) or more, vandalism is punishable by imprisonment in the state prison or in a county jail not exceeding one year, or by a fine of not more than fifty thousand dollars ($50,000), or by both that fine and imprisonment.

(2) If the amount of defacement, damage, or destruction is five thousand dollars ($5,000) or more but less than fifty thousand dollars ($50,000), vandalism is punishable by imprisonment in the state prison, or in a county jail not exceeding one year, or by a fine of not more than ten thousand dollars ($10,000), or by both that fine and imprisonment.

(3) If the amount of defacement, damage, or destruction is four hundred dollars ($400) or more but less than five thousand dollars ($5,000), vandalism is punishable by imprisonment in a county jail not exceeding one year, or by a fine of five thousand dollars ($5,000), or by both that fine and imprisonment.

(4) (A) If the amount of defacement, damage, or destruction is less than four hundred dollars ($400), vandalism is punishable by imprisonment in a county jail for not more than six months, or by a fine of not more than one thousand dollars ($1,000), or by both that fine and imprisonment.

(B) If the amount of defacement, damage, or destruction is less than four hundred dollars ($400), and the defendant has been previously convicted of vandalism or affixing graffiti or other inscribed material under Section 594, 594.3, 594.4, 640.5, 640.6, or 640.7, vandalism is punishable by imprisonment in a county jail for not more than one year, or by a fine of not more than five thousand dollars ($5,000) or by both that fine and imprisonment.

(c) (1) Upon conviction of any person under this section for acts of vandalism consisting of defacing property with graffiti or other inscribed materials, the court may, in addition to any punishment imposed under subdivision (b), order the defendant to clean up, repair, or replace the damaged property himself or herself, or, if the jurisdiction has adopted a graffiti abatement program, order the defendant, and his or her parents or guardians if the defendant is a minor, to keep the damaged property or another specified property in the community free of graffiti for up to one year. Participation of a parent or guardian is not required under this subdivision if the court deems this participation to be detrimental to the defendant, or if the parent or guardian is a single parent who must care for young children.

(2) Any city, county, or city and county may enact an ordinance that provides all of the following:

(A) Upon conviction of any person pursuant to this section for acts of vandalism, the court may, in addition to any punishment imposed under subdivision (b), provided that the court determines that the defendant has the ability to pay any law enforcement costs not exceeding two hundred fifty dollars ($250), order the defendant to pay all or part of the costs not to exceed two hundred fifty dollars ($250) incurred by a law enforcement agency in identifying and apprehending the defendant. The law enforcement agency shall provide evidence of, and bear the burden of establishing, the reasonable costs that it incurred in identifying and apprehending the defendant.

(B) The law enforcement costs authorized to be paid pursuant to this subdivision are in addition to any other costs incurred or recovered by the law enforcement agency, and payment of these costs does not in any way limit, preclude, or restrict any other right, remedy, or action otherwise available to the law enforcement agency.

(d) If a minor is personally unable to pay a fine levied for acts prohibited by this section, the parent of that minor shall be liable for payment of the fine. A court may waive payment of the fine or any part thereof by the parent upon a finding of good cause.

(e) As used in this section, the term "graffiti or other inscribed material" includes any unauthorized inscription, word, figure, mark, or design that is written, marked, etched, scratched, drawn, or painted on real or personal property.

(f) As used in this section, "graffiti abatement program" means a program adopted by a city, county, or city and county by resolution or ordinance that provides for the administration and financing of graffiti removal, community education on the prevention of graffiti, and enforcement of graffiti laws.

(g) The court may order any person ordered to perform community service or graffiti removal pursuant to paragraph (1) of subdivision (c) to undergo counseling.

(h) No amount paid by a defendant in satisfaction of a criminal matter shall be applied in satisfaction of the law enforcement costs that may be imposed pursuant to this section until all outstanding base fines, state and local penalty assessments, restitution orders, and restitution fines have been paid.

(i) This section shall remain in effect 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. 1.2. Section 594 is added to the Penal Code, to read:

594. (a) Every person who maliciously commits any of the following acts with respect to any real or personal property not his or her own, in cases other than those specified by state law, is guilty of vandalism:

(1) Defaces with graffiti or other inscribed material.

(2) Damages.

(3) Destroys.

Whenever a person violates this subdivision with respect to real property, vehicles, signs, fixtures, or furnishings belonging to any public entity, as defined by Section 811.2 of the Government Code, or the federal government, it shall be a permissive inference that the person neither owned the property nor had the permission of the owner to deface, damage, or destroy the property.

(b) (1) If the amount of defacement, damage, or destruction is fifty thousand dollars ($50,000) or more, vandalism is punishable by imprisonment in the state prison or in a county jail not exceeding one year, or by a fine of not more than fifty thousand dollars ($50,000), or by both that fine and imprisonment.

(2) If the amount of defacement, damage, or destruction is five thousand dollars ($5,000) or more but less than fifty thousand dollars ($50,000), vandalism is punishable by imprisonment in the state prison, or in a county jail not exceeding one year, or by a fine of not more than ten thousand dollars ($10,000), or by both that fine and imprisonment.

(3) If the amount of defacement, damage, or destruction is four hundred dollars ($400) or more but less than five thousand dollars ($5,000), vandalism is punishable by imprisonment in a county jail not exceeding one year, or by a fine of five thousand dollars ($5,000), or by both that fine and imprisonment.

(4) (A) If the amount of defacement, damage, or destruction is less than four hundred dollars ($400), vandalism is punishable by imprisonment in a county jail for not more than six months, or by a fine of not more than one thousand dollars ($1,000), or by both that fine and imprisonment.

(B) If the amount of defacement, damage, or destruction is less than four hundred dollars ($400), and the defendant has been previously convicted of vandalism or affixing graffiti or other inscribed material under Section 594, 594.3, 594.4, 640.5, 640.6, or 640.7, vandalism is punishable by imprisonment in a county jail for not more than one year, or by a fine of not more than five thousand dollars ($5,000) or by both that fine and imprisonment.

(c) Upon conviction of any person under this section for acts of vandalism consisting of defacing property with graffiti or other inscribed materials, the court may, in addition to any punishment imposed under subdivision (b), order the defendant to clean up, repair, or replace the damaged property himself or herself, or, if the jurisdiction has adopted a graffiti abatement program, order the defendant, and his or her parents or guardians if the defendant is a minor, to keep the damaged property or another specified property in the community free of graffiti for up to one year. Participation of a parent or guardian is not required under this subdivision if the court deems this participation to be detrimental to the defendant, or if the parent or guardian is a single parent who must care for young children.

(d) If a minor is personally unable to pay a fine levied for acts prohibited by this section, the parent of that minor shall be liable for payment of the fine. A court may waive payment of the fine or any part thereof by the parent upon a finding of good cause.

(e) As used in this section, the term "graffiti or other inscribed material" includes any unauthorized inscription, word, figure, mark, or design that is written, marked, etched, scratched, drawn, or painted on real or personal property.

(f) As used in this section, "graffiti abatement program" means a program adopted by a city, county, or city and county by resolution or ordinance that provides for the administration and financing of graffiti removal, community education on the prevention of graffiti, and enforcement of graffiti laws.

(g) The court may order any person ordered to perform community service or graffiti removal pursuant to subdivision (c) to undergo counseling.

(h) This section shall become operative on January 1, 2002.

SEC. 2. Section 594.6 of the Penal Code is amended to read:

594.6. (a) Every person who, having been convicted of vandalism or affixing graffiti or other inscribed material under Section 594, 594.3, 594.4, or 640.7, or any combination of these offenses, may be ordered by the court as a condition of probation to perform community service not to exceed 300 hours over a period not to exceed 240 days during a time other than his or her hours of school attendance or employment. Nothing in this subdivision shall limit the court from ordering the defendant to perform a longer period of community service if a longer period of community service is authorized under other provisions of law.

(b) In lieu of the community service that may be ordered pursuant to subdivision (a), the court may, if a jurisdiction has adopted a graffiti abatement program as defined in subdivision (f) of Section 594, order the defendant, and his or her parents or guardians if the defendant is a minor, as a condition of probation, to keep a specified property in the community free of graffiti for up to one year. Participation of a parent or guardian is not required under this subdivision if the court deems this participation to be detrimental to the defendant, or if the parent or guardian is a single parent who must care for young children.

(c) The court may order any person ordered to perform community service or graffiti removal pursuant to subdivision (a) or (b) to undergo counseling.

SEC. 3. Section 640.7 of the Penal Code is amended to read:

640.7. Any person who violates Section 594, 640.5, and 640.6 on or within 100 feet of a highway, or its appurtenances, including, but not limited to, guardrails, signs, traffic signals, snow poles, and similar facilities, excluding signs naming streets, is 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. A second conviction is punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

SEC. 4. Sections 1.1 and 1.2 of this bill incorporate amendments to Section 594 of the Penal Code proposed by this bill, AB 1386, and AB 1897. Those two sections shall only become operative if (1) this bill and AB 1897 are enacted and become effective on or before January 1, 1999, (2) either this bill or AB 1386, and AB 1897 amend Section 594 of the Penal Code, and (3) this bill is enacted after either AB 1386 or AB 1897, in which case Section 1 of this bill shall not become operative.

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

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

CHAPTER 853

An act to amend Sections 594.6 and 640.7 of, and to amend, repeal, and add Section 594 of, the Penal Code, relating to vandalism.

[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 594 of the Penal Code is amended to read:

594. (a) Every person who maliciously commits any of the following acts with respect to any real or personal property not his or her own, in cases other than those specified by state law, is guilty of vandalism:

(1) Defaces with graffiti or other inscribed material.

(2) Damages.

(3) Destroys.

Whenever a person violates this subdivision with respect to real property, vehicles, signs, fixtures, or furnishings belonging to any public entity, as defined by Section 811.2 of the Government Code, or the federal government, it shall be a permissive inference that the

person neither owned the property nor had the permission of the owner to deface, damage, or destroy the property.

(b) (1) If the amount of defacement, damage, or destruction is fifty thousand dollars ($50,000) or more, vandalism is punishable by imprisonment in the state prison or in a county jail not exceeding one year, or by a fine of not more than fifty thousand dollars ($50,000), or by both that fine and imprisonment.

(2) If the amount of defacement, damage, or destruction is five thousand dollars ($5,000) or more but less than fifty thousand dollars ($50,000), vandalism is punishable by imprisonment in the state prison, or in a county jail not exceeding one year, or by a fine of not more than ten thousand dollars ($10,000), or by both that fine and imprisonment.

(3) If the amount of defacement, damage, or destruction is four hundred dollars ($400) or more but less than five thousand dollars ($5,000), vandalism is punishable by imprisonment in a county jail not exceeding one year, or by a fine of five thousand dollars ($5,000), or by both that fine and imprisonment.

(4) (A) If the amount of defacement, damage, or destruction is less than four hundred dollars ($400), vandalism is punishable by imprisonment in a county jail for not more than six months, or by a fine of not more than one thousand dollars ($1,000), or by both that fine and imprisonment.

(B) If the amount of defacement, damage, or destruction is less than four hundred dollars ($400), and the defendant has been previously convicted of vandalism or affixing graffiti or other inscribed material under Section 594, 594.3, 594.4, 640.5, 640.6, or 640.7, vandalism is punishable by imprisonment in a county jail for not more than one year, or by a fine of not more than five thousand dollars ($5,000) or by both that fine and imprisonment.

(c) Upon conviction of any person under this section for acts of vandalism consisting of defacing property with graffiti or other inscribed materials, the court may, in addition to any punishment imposed under subdivision (b), order the defendant to clean up, repair, or replace the damaged property himself or herself, or, if the jurisdiction has adopted a graffiti abatement program, order the defendant, and his or her parents or guardians if the defendant is a minor, to keep the damaged property or another specified property in the community free of graffiti for up to one year. Participation of a parent or guardian is not required under this subdivision if the court deems this participation to be detrimental to the defendant, or if the parent or guardian is a single parent who must care for young children.

(d) If a minor is personally unable to pay a fine levied for acts prohibited by this section, the parent of that minor shall be liable for payment of the fine. A court may waive payment of the fine or any part thereof by the parent upon a finding of good cause.

(e) As used in this section, the term "graffiti or other inscribed material" includes any unauthorized inscription, word, figure, mark, or design that is written, marked, etched, scratched, drawn, or painted on real or personal property.

(f) As used in this section, "graffiti abatement program" means a program adopted by a city, county, or city and county by resolution or ordinance that provides for the administration and financing of graffiti removal, community education on the prevention of graffiti, and enforcement of graffiti laws.

(g) The court may order any person ordered to perform community service or graffiti removal pursuant to subdivision (c) to undergo counseling.

SEC. 1.5. Section 594 of the Penal Code is amended to read:

594. (a) Every person who maliciously commits any of the following acts with respect to any real or personal property not his or her own, in cases other than those specified by state law, is guilty of vandalism:

(1) Defaces with graffiti or other inscribed material.

(2) Damages.

(3) Destroys.

Whenever a person violates this subdivision with respect to real property, vehicles, signs, fixtures, or furnishings belonging to any public entity, as defined by Section 811.2 of the Government Code, or the federal government, it shall be a permissive inference that the person neither owned the property nor had the permission of the owner to deface, damage, or destroy the property.

(b) (1) If the amount of defacement, damage, or destruction is fifty thousand dollars ($50,000) or more, vandalism is punishable by imprisonment in the state prison or in a county jail not exceeding one year, or by a fine of not more than fifty thousand dollars ($50,000), or by both that fine and imprisonment.

(2) If the amount of defacement, damage, or destruction is five thousand dollars ($5,000) or more but less than fifty thousand dollars ($50,000), vandalism is punishable by imprisonment in the state prison, or in a county jail not exceeding one year, or by a fine of not more than ten thousand dollars ($10,000), or by both that fine and imprisonment.

(3) If the amount of defacement, damage, or destruction is four hundred dollars ($400) or more but less than five thousand dollars ($5,000), vandalism is punishable by imprisonment in a county jail not exceeding one year, or by a fine of five thousand dollars ($5,000), or by both that fine and imprisonment.

(4) (A) If the amount of defacement, damage, or destruction is less than four hundred dollars ($400), vandalism is punishable by imprisonment in a county jail for not more than six months, or by a fine of not more than one thousand dollars ($1,000), or by both that fine and imprisonment.

(B) If the amount of defacement, damage, or destruction is less than four hundred dollars ($400), and the defendant has been previously convicted of vandalism or affixing graffiti or other inscribed material under Section 594, 594.3, 594.4, 640.5, 640.6, or 640.7, vandalism is punishable by imprisonment in a county jail for not more than one year, or by a fine of not more than five thousand dollars ($5,000) or by both that fine and imprisonment.

(c) (1) Upon conviction of any person under this section for acts of vandalism consisting of defacing property with graffiti or other inscribed materials, the court may, in addition to any punishment imposed under subdivision (b), order the defendant to clean up, repair, or replace the damaged property himself or herself, or, if the jurisdiction has adopted a graffiti abatement program, order the defendant, and his or her parents or guardians if the defendant is a minor, to keep the damaged property or another specified property in the community free of graffiti for up to one year. Participation of a parent or guardian is not required under this subdivision if the court deems this participation to be detrimental to the defendant, or if the parent or guardian is a single parent who must care for young children.

(2) Any city, county, or city and county may enact an ordinance that provides all of the following:

(A) Upon conviction of any person pursuant to this section for acts of vandalism, the court may, in addition to any punishment imposed under subdivision (b), provided that the court determines that the defendant has the ability to pay any law enforcement costs not exceeding two hundred fifty dollars ($250), order the defendant to pay all or part of the costs not to exceed two hundred fifty dollars ($250) incurred by a law enforcement agency in identifying and apprehending the defendant. The law enforcement agency shall provide evidence of, and bear the burden of establishing, the reasonable costs that it incurred in identifying and apprehending the defendant.

(B) The law enforcement costs authorized to be paid pursuant to this subdivision are in addition to any other costs incurred or recovered by the law enforcement agency, and payment of these costs does not in any way limit, preclude, or restrict any other right, remedy, or action otherwise available to the law enforcement agency.

(d) If a minor is personally unable to pay a fine levied for acts prohibited by this section, the parent of that minor shall be liable for payment of the fine. A court may waive payment of the fine or any part thereof by the parent upon a finding of good cause.

(e) As used in this section, the term "graffiti or other inscribed material" includes any unauthorized inscription, word, figure, mark, or design that is written, marked, etched, scratched, drawn, or painted on real or personal property.

(f) As used in this section, "graffiti abatement program" means a program adopted by a city, county, or city and county by resolution or ordinance that provides for the administration and financing of graffiti removal, community education on the prevention of graffiti, and enforcement of graffiti laws.

(g) The court may order any person ordered to perform community service or graffiti removal pursuant to paragraph (1) of subdivision (c) to undergo counseling.

(h) No amount paid by a defendant in satisfaction of a criminal matter shall be applied in satisfaction of the law enforcement costs that may be imposed pursuant to this section until all outstanding base fines, state and local penalty assessments, restitution orders, and restitution fines have been paid.

(i) This section shall remain in effect 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. 1.6. Section 594 is added to the Penal Code, to read:

594. (a) Every person who maliciously commits any of the following acts with respect to any real or personal property not his or her own, in cases other than those specified by state law, is guilty of vandalism:

(1) Defaces with graffiti or other inscribed material.

(2) Damages.

(3) Destroys.

Whenever a person violates this subdivision with respect to real property, vehicles, signs, fixtures, or furnishings belonging to any public entity, as defined by Section 811.2 of the Government Code, or the federal government, it shall be a permissive inference that the person neither owned the property nor had the permission of the owner to deface, damage, or destroy the property.

(b) (1) If the amount of defacement, damage, or destruction is fifty thousand dollars ($50,000) or more, vandalism is punishable by imprisonment in the state prison or in a county jail not exceeding one year, or by a fine of not more than fifty thousand dollars ($50,000), or by both that fine and imprisonment.

(2) If the amount of defacement, damage, or destruction is five thousand dollars ($5,000) or more but less than fifty thousand dollars ($50,000), vandalism is punishable by imprisonment in the state prison, or in a county jail not exceeding one year, or by a fine of not more than ten thousand dollars ($10,000), or by both that fine and imprisonment.

(3) If the amount of defacement, damage, or destruction is four hundred dollars ($400) or more but less than five thousand dollars ($5,000), vandalism is punishable by imprisonment in a county jail not exceeding one year, or by a fine of five thousand dollars ($5,000), or by both that fine and imprisonment.

(4) (A) If the amount of defacement, damage, or destruction is less than four hundred dollars ($400), vandalism is punishable by

imprisonment in a county jail for not more than six months, or by a fine of not more than one thousand dollars ($1,000), or by both that fine and imprisonment.

(B) If the amount of defacement, damage, or destruction is less than four hundred dollars ($400), and the defendant has been previously convicted of vandalism or affixing graffiti or other inscribed material under Section 594, 594.3, 594.4, 640.5, 640.6, or 640.7, vandalism is punishable by imprisonment in a county jail for not more than one year, or by a fine of not more than five thousand dollars ($5,000) or by both that fine and imprisonment.

(c) Upon conviction of any person under this section for acts of vandalism consisting of defacing property with graffiti or other inscribed materials, the court may, in addition to any punishment imposed under subdivision (b), order the defendant to clean up, repair, or replace the damaged property himself or herself, or, if the jurisdiction has adopted a graffiti abatement program, order the defendant, and his or her parents or guardians if the defendant is a minor, to keep the damaged property or another specified property in the community free of graffiti for up to one year. Participation of a parent or guardian is not required under this subdivision if the court deems this participation to be detrimental to the defendant, or if the parent or guardian is a single parent who must care for young children.

(d) If a minor is personally unable to pay a fine levied for acts prohibited by this section, the parent of that minor shall be liable for payment of the fine. A court may waive payment of the fine or any part thereof by the parent upon a finding of good cause.

(e) As used in this section, the term "graffiti or other inscribed material" includes any unauthorized inscription, word, figure, mark, or design that is written, marked, etched, scratched, drawn, or painted on real or personal property.

(f) As used in this section, "graffiti abatement program" means a program adopted by a city, county, or city and county by resolution or ordinance that provides for the administration and financing of graffiti removal, community education on the prevention of graffiti, and enforcement of graffiti laws.

(g) The court may order any person ordered to perform community service or graffiti removal pursuant to paragraph (1) of subdivision (c) to undergo counseling.

(h) This section shall become operative on January 1, 2002.

SEC. 2. Section 594.6 of the Penal Code is amended to read:

594.6. (a) Every person who, having been convicted of vandalism or affixing graffiti or other inscribed material under Section 594, 594.3, 594.4, or 640.7, or any combination of these offenses, may be ordered by the court as a condition of probation to perform community service not to exceed 300 hours over a period not to exceed 240 days during a time other than his or her hours of school attendance or employment. Nothing in this subdivision shall limit the

court from ordering the defendant to perform a longer period of community service if a longer period of community service is authorized under other provisions of law.

(b) In lieu of the community service that may be ordered pursuant to subdivision (a), the court may, if a jurisdiction has adopted a graffiti abatement program as defined in subdivision (f) of Section 594, order the defendant, and his or her parents or guardians if the defendant is a minor, as a condition of probation, to keep a specified property in the community free of graffiti for up to one year. Participation of a parent or guardian is not required under this subdivision if the court deems this participation to be detrimental to the defendant, or if the parent or guardian is a single parent who must care for young children.

(c) The court may order any person ordered to perform community service or graffiti removal pursuant to subdivision (a) or (b) to undergo counseling.

SEC. 3. Section 640.7 of the Penal Code is amended to read:

640.7. Any person who violates Section 594, 640.5, or 640.6 on or within 100 feet of a highway, or its appurtenances, including, but not limited to, guardrails, signs, traffic signals, snow poles, and similar facilities, excluding signs naming streets, is 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. A second conviction is punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

SEC. 4. Sections 1.5 and 1.6 of this bill incorporate amendments to Section 594 of the Penal Code proposed by both this bill and AB 1897. They shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 594 of the Penal Code, and (3) this bill is enacted after AB 1897, in which case Section 1 of this bill shall not become operative.

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

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

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CHAPTER 854

An act to amend Sections 3653, 4351, 5235, and 5241 of, and to add Section 4205 to, the Family Code, and to amend Section 11350.1 of the Welfare and Institutions Code, relating to support orders.

[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 3653 of the Family Code is amended to read:

3653. (a) An order modifying or terminating a support order may be made retroactive to the date of the filing of the notice of motion or order to show cause to modify or terminate, or to any subsequent date, except as provided in subdivision (b) or by federal law (42 U.S.C. Sec. 666(a)(9)).

(b) If an order modifying or terminating a support order is entered due to the unemployment of either the support obligor or the support obligee, the order shall be made retroactive to the later of the date of the service on the opposing party of the notice of motion or order to show cause to modify or terminate or the date of unemployment, subject to the notice requirements of federal law (42 U.S.C. Sec. 666(a)(9)), unless the court finds good cause not to make the order retroactive and states its reasons on the record.

(c) If an order decreasing or terminating a support order is entered retroactively pursuant to this section, the support obligor shall nevertheless not be entitled to, and the support obligee shall have no obligation to repay, any amounts previously paid by the support obligor pursuant to the prior order that are in excess of the amounts due pursuant to the retroactive order.

SEC. 2. Section 4205 is added to the Family Code, to read:

4205. Any notice from the district attorney requesting a meeting with the support obligor for any purpose authorized under this part shall contain a statement advising the support obligor of his or her right to have an attorney present at the meeting.

SEC. 3. Section 4351 of the Family Code is amended to read:

4351. (a) In any proceeding where the court has entered an order pursuant to Section 4350, the court may also refer the matter of enforcement of the spousal support order to the district attorney. The district attorney may bring those enforcement proceedings as the district attorney in the district attorney's discretion determines to be appropriate.

(b) Notwithstanding subdivision (a), in any case in which the district attorney is required to appear on behalf of a welfare recipient in a proceeding to enforce an order requiring payment of child support, the district attorney shall also enforce any order requiring payment to the welfare recipient of spousal support that is in arrears.

(c) Nothing in this section shall be construed to prohibit the district attorney from bringing an action or initiating process to enforce or punish the failure to obey an order for spousal support under any provision of law that empowers the district attorney to bring an action or initiate a process, whether or not there has been a referral by the court pursuant to this chapter.

(d) Any notice from the district attorney requesting a meeting with the support obligor for any purpose authorized under this part shall contain a statement advising the support obligor of his or her right to have an attorney present at the meeting.

SEC. 4. Section 5235 of the Family Code is amended to read:

5235. (a) The employer shall continue to withhold and forward support as required by the assignment order until served with notice terminating the assignment order. If an employer withholds support as required by the assignment order, the obligor shall not be held in contempt or subject to criminal prosecution for nonpayment of the support that was withheld by the employer but not received by the obligee. If the employer withheld the support but failed to forward the payments to the obligee, the employer shall be liable for the payments, including interest, as provided in Section 5241.

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

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

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

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

SEC. 5. Section 5241 of the Family Code is amended to read:

5241. (a) An employer who willfully fails to withhold and forward support pursuant to a currently valid assignment order entered and served upon the employer pursuant to this chapter is liable to the obligee for the amount of support not withheld, forwarded, or otherwise paid to the obligee, including any interest thereon.

(b) If an employer withholds support as required by the assignment order, the obligor shall not be held in contempt or subject to criminal prosecution for nonpayment of the support that was withheld by the employer but not received by the obligee.

(c) In addition to any other penalty or liability provided by law, willful failure by an employer to comply with an assignment order is

punishable as a contempt pursuant to Section 1218 of the Code of Civil Procedure.

(d) If an employer withholds support, as required by the assignment order, but fails to forward the support to the obligee, the district attorney shall take appropriate action to collect the withheld sums from the employer. This provision shall not be construed to expand or limit the duties and obligations of the Labor Commissioner, as set forth in Section 200 and following of the Labor Code.

SEC. 6. Section 11350.1 of the Welfare and Institutions Code is amended to read:

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

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

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

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

to establish a child support obligation shall also apply to actions to enforce a spousal support order.

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

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

(2) Notice of the parent's status as a party shall be given to the parent by the district attorney in conjunction with the notice required by subdivision (e) of Section 11478.2. The complaint shall contain this notice. Service of the complaint on the parent in compliance with Section 1013 of the Code of Civil Procedure, or as otherwise provided by law, shall constitute compliance with this section. In all actions commenced under the procedures and forms in effect on or before December 31, 1996, the parent who has requested or is receiving support enforcement services of the district attorney shall not become a party to the action until he or she is joined as a party pursuant to an ex parte application or noticed motion for joinder filed by the district attorney or a noticed motion filed by either parent. The district attorney shall serve a copy of any order for joinder of a parent obtained by the district attorney's application on both parents in compliance with Section 1013 of the Code of Civil Procedure.

(3) The parent who has requested or is receiving support enforcement services of the district attorney is a party to an action brought under this section for issues relating to the support, custody, and visitation of a child, and for restraining orders, and for no other purpose. The district attorney shall not be required to serve or receive service of papers, pleadings, or documents, or participate in, or attend any hearing or proceeding relating to issues of custody or visitation, except as otherwise required by law. Orders concerning custody and visitation may be made in an action pursuant to this subdivision only if orders concerning custody and visitation have not been previously made by a court of competent jurisdiction in this state or another state and the court has jurisdiction and is the proper venue for custody and visitation determinations. All issues regarding

custody and visitation shall be heard and resolved in the manner provided by the Family Code. Except as otherwise provided by law, the district attorney shall control support and parentage litigation brought pursuant to this section, and the manner, method, and procedures used in establishing parentage and in establishing and enforcing support obligations unless and until the parent who requested or is receiving support enforcement services has requested in writing that the district attorney close his or her case and the case has been closed in accordance with federal regulation.

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

(2) A parent who has requested or is receiving support enforcement services of the district attorney may take independent action to enforce a support order made pursuant to this section while support enforcement services are being provided by the district attorney with the written consent of the district attorney. At least 30 days prior to filing an independent enforcement action, the parent shall provide the district attorney with written notice of the parent's intent to file an enforcement action that includes a description of the type of enforcement action the parent intends to file. Within 30 days of receiving the notice, the district attorney shall either provide written consent for the parent to proceed with the independent enforcement action or notify the parent that the district attorney objects to the parent filing the proposed independent enforcement action. The district attorney may object only if the district attorney is currently using an administrative or judicial method to enforce the support obligation or if the proposed independent enforcement action would interfere with an investigation being conducted by the district attorney. If the district attorney does not respond to the parent's written notice within 30 days, the district attorney shall be deemed to have given consent.

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

(g) Any notice from the district attorney requesting a meeting with the support obligor for any purpose authorized under this

section shall contain a statement advising the support obligor of his or her right to have an attorney present at the meeting.

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

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

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 855

An act to amend Section 2827 of the Public Utilities Code, and to add and repeal Section 73 of the Revenue and Taxation Code, relating to solar energy.

[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 2827 of the Public Utilities Code is amended to read:

2827. (a) The Legislature finds and declares that a program to provide net energy metering for eligible customer-generators is one way to encourage private investment in renewable energy resources, stimulate in-state economic growth, enhance the continued diversification of California's energy resource mix, and reduce interconnection and administrative costs for electricity suppliers.

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

(1) "Electric service provider" means an electric corporation, as defined in Section 218, a local publicly owned electric utility, as defined in Section 9604, or an electrical cooperative, as defined in Section 2776. "Electric service provider" also means an entity that offers electrical service to residential and small commercial customers, as defined in Section 394, if that entity offers net energy

metering. Any entity that offers net energy metering to residential and small commercial customers shall comply with this section.

(2) "Eligible customer-generator" means a residential customer, or a small commercial customer as defined in subdivision (h) of Section 331, of an electric service provider, who uses a solar or a wind turbine electrical generating facility, or a hybrid system of both, with a capacity of not more than 10 kilowatts that is located on the customer's premises, is interconnected and operates in parallel with the electric grid, and is intended primarily to offset part or all of the customer's own electrical requirements.

(3) "Net energy metering" means measuring the difference between the electricity supplied through the electric grid and the electricity generated by an eligible customer-generator and fed back to the electric grid over a 12-month period as described in subdivision (e). Net energy metering shall be accomplished using a single meter capable of registering the flow of electricity in two directions. An additional meter or meters to monitor the flow of electricity in each direction may be installed with the consent of the customer-generator, at the expense of the electric service provider, and the additional metering shall be used only to provide the information necessary to accurately bill or credit the customer-generator pursuant to the provisions of subdivision (e), or to collect solar or wind electric generating system performance information for research purposes. If the existing electrical meter of an eligible customer-generator is not capable of measuring the flow of electricity in two directions, the customer-generator shall be responsible for all expenses involved in purchasing and installing a meter that is able to measure electricity flow in two directions. If an additional meter or meters are installed, the net energy metering calculation shall yield a result identical to that of a single meter. An eligible customer-generator who already owns an existing solar or wind turbine electrical generating facility, or a hybrid system of both, is eligible to receive net energy metering service in accordance with this section.

(4) "Ratemaking authority" means, for an electrical corporation as defined in Section 218, or an electrical cooperative as defined in Section 2776, the commission, and for a local publicly owned electric utility as defined in Section 9604, the local elected body responsible for regulating the rates of the utility.

(c) (1) Every electric service provider shall develop a standard contract or tariff providing for net energy metering, and shall make this contract available to eligible customer-generators, upon request, on a first-come, first-served basis until the time that the total rated generating capacity used by eligible customer-generators equals one-tenth of 1 percent of the electric service provider's aggregate customer peak demand.

(2) On an annual basis, beginning in 1999, every electric service provider shall make available to the ratemaking authority

information on the total rated generating capacity used by eligible customer-generators that are customers of that provider in the provider's service area. For those electric service providers who are operating pursuant to Section 394, they shall make available to the ratemaking authority the information required by this paragraph for each eligible customer-generator that is their customer for each service area of an electric corporation, local publicly owned electric utility, or electrical cooperative, in which the customer has net energy metering. The ratemaking authority shall develop a process for making the information required by this paragraph available to energy service providers, and for using that information to determine when, pursuant to paragraph (3), a service provider is not obligated to provide net energy metering to additional customer-generators in its service area.

(3) Notwithstanding paragraph (1), an electric service provider is not obligated to provide net energy metering to additional customer-generators in its service area when the combined total peak demand of all customer-generators served by all the electric service providers in that service area furnishing net energy metering to eligible customer-generators equals one-tenth of 1 percent of the aggregate customer peak demand of those electric service providers.

(d) Each net energy metering contract or tariff shall be identical, with respect to rate structure, all retail rate components, and any monthly charges, to the contract or tariff to which the same customer would be assigned if such customer was not an eligible customer-generator. The charges for all retail rate components for eligible customer-generators shall be based exclusively on the customer-generator's net kilowatthour consumption over a 12-month period, without regard to the customer-generator's choice of electric service provider, in accordance with subdivision (e). Any new or additional demand charge, standby charge, customer charge, minimum monthly charge, interconnection charge, or other charge that would increase an eligible customer-generator's costs beyond those of other customers in the rate class to which the eligible customer-generator would otherwise be assigned are contrary to the intent of this legislation, and shall not form a part of net energy metering contracts or tariffs.

(e) The net energy metering calculation shall be made by measuring the difference between the electricity supplied to the eligible customer-generator and the electricity generated by the eligible customer-generator and fed back to the electric grid over a 12-month period. The following rules shall apply to the annualized net metering calculation:

(1) The eligible customer-generator shall, at the end of each 12-month period following the date of final interconnection of the eligible customer-generator's system with an electric service provider, and at each anniversary date thereafter, be billed for electricity used during that period. The electric service provider shall

determine if the eligible customer-generator was a net consumer or a net producer of electricity during that period.

(2) At the end of each 12-month period, where the electricity supplied during the period by the electric service provider exceeds the electricity generated by the eligible customer-generator during that same period, the eligible customer-generator is a net electricity consumer and the electric service provider shall be owed compensation for the eligible customer-generator's net kilowatthour consumption over that same period. The compensation owed for the eligible customer-generator's net 12-month kilowatthour consumption shall be calculated based on the average retail price per kilowatthour for the eligible customer-generator's rate class over that same period.

(3) At the end of each 12-month period, where the electricity generated by the eligible customer-generator during the 12-month period exceeds the electricity supplied by the electric service provider during that same period, the eligible customer-generator is a net electricity producer and the electric service provider shall retain any excess kilowatthours generated during the prior 12-month period. The eligible customer-generator shall not be owed any compensation for those excess kilowatthours unless the electric service provider enters into a purchase agreement with the eligible customer-generator for those excess kilowatthours.

(4) The electric service provider shall provide every eligible customer-generator with net electricity consumption information on each regular bill. That information shall include the current monetary balance owed the electric service provider for net electricity consumed since the last 12-month period ended. Notwithstanding subdivision (e), an electric service provider shall, upon the request of an eligible customer-generator, permit that customer to pay monthly for net energy consumed.

(5) If an eligible customer-generator terminates the customer relationship with the electric service provider, the electric service provider shall reconcile the eligible customer-generator's consumption and production of electricity during any part of a 12-month period following the last reconciliation, according to the requirements set forth in this subdivision, except that those requirements shall apply only to the months since the most recent 12-month bill.

(f) A solar or wind turbine electrical generating system, or a hybrid system of both, used by an eligible customer-generator shall meet all applicable safety and performance standards established by the National Electrical Code, the Institute of Electrical and Electronics Engineers, and accredited testing laboratories such as Underwriters Laboratories and, where applicable, rules of the Public Utilities Commission regarding safety and reliability. A customer-generator whose solar or wind turbine electrical generating system, or a hybrid system of both, meets those standards

and rules shall not be required to install additional controls, perform or pay for additional tests, or purchase additional liability insurance.

SEC. 2. Section 73 is added to the Revenue and Taxation Code, to read:

73. (a) Pursuant to the authority granted to the Legislature pursuant to paragraph (1) of subdivision (c) of Section 2 of Article XIII A of the California Constitution, the term "newly constructed," as used in subdivision (a) of Section 2 of Article XIII A of the California Constitution, does not include the construction or addition of any active solar energy system, as defined in subdivision (b).

(b) (1) "Active solar energy system" means a system that uses solar devices, which are thermally isolated from living space or any other area where the energy is used, to provide for the collection, storage, or distribution of solar energy.

(2) "Active solar energy system" does not include solar swimming pool heaters or hot tub heaters.

(3) Active solar energy systems may be used for any of the following:

(A) Domestic, recreational, therapeutic, or service water heating.

(B) Space conditioning.

(C) Production of electricity.

(D) Process heat.

(E) Solar mechanical energy.

(c) (1) (A) The Legislature finds and declares that the definition of spare parts in this paragraph is declarative of the intent of the Legislature, in prior statutory enactments of this section that excluded active solar energy systems from the term "newly constructed," as used in the California Constitution, thereby creating a tax appraisal exclusion.

(B) An active solar energy system that uses solar energy in the production of electricity includes storage devices, power conditioning equipment, transfer equipment, and parts related to the functioning of those items. In general, the use of solar energy in the production of electricity involves the transformation of sunlight into electricity through the use of devices such as solar cells or other collectors. However, an active solar energy system used in the production of electricity includes only equipment used up to, but not including, the stage of the transmission or use of the electricity. For the purpose of this paragraph, the term "parts" includes spare parts that are owned by the owner of, or the maintenance contractor for, an active solar energy system that uses solar energy in the production of electricity and which spare parts were specifically purchased, designed, or fabricated by or for that owner or maintenance contractor for installation in an active solar energy system that uses solar energy in the production of electricity, thereby including those parts in the tax appraisal exclusion created by this section.

(2) An active solar energy system that uses solar energy in the production of electricity also includes pipes and ducts that are used

exclusively to carry energy derived from solar energy. Pipes and ducts that are used to carry both energy derived from solar energy and from energy derived from other sources are active solar energy system property only to the extent of 75 percent of their full cash value.

(3) An active solar energy system that uses solar energy in the production of electricity does not include auxiliary equipment, such as furnaces and hot water heaters, that use a source of power other than solar energy to provide usable energy. An active solar energy system that uses solar energy in the production of electricity does include equipment, such as ducts and hot water tanks, that is utilized by both auxiliary equipment and solar energy equipment, that is, dual use equipment. That equipment is active solar energy system property only to the extent of 75 percent of its full cash value.

(d) This section shall apply to property tax lien dates for the 1999–2000 to 2004–05 fiscal years, inclusive. For purposes of supplemental assessment, this section shall apply only to qualifying construction or additions completed on or after January 1, 1999.

(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. 3. 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 856

An act to add Section 664.7 to the Code of Civil Procedure, and to amend Section 19719 of the Revenue and Taxation Code, relating to liability.

[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 664.7 is added to the Code of Civil Procedure, to read:

664.7. (a) Notwithstanding Section 664.6, if parties to a pending construction defect action stipulate personally or, where a party's

contribution is paid on its behalf pursuant to a policy of insurance, the parties stipulate through their respective counsel, in a writing signed by the parties outside the presence of the court or orally before the court, for settlement of the case, or part thereof, the court, upon motion, may enter judgment pursuant to the terms of the settlement. If requested by the parties, the court may retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement.

(b) It is the intent of the Legislature that this section modify the holding of Levy v. Superior Court (1995), 10 Cal. 4th 578, regarding the authority of counsel in a construction defect action to bind a party to a settlement.

(c) For purposes of this section, "construction defect action" shall mean any civil action that seeks monetary recovery against a developer, builder, design professional, general contractor, material supplier, or subcontractor of any residential dwelling based upon a claim for alleged defects in the design or construction of the residential dwelling unit.

SEC. 2. Section 19719 of the Revenue and Taxation Code is amended to read:

19719. (a) Any person who attempts or purports to exercise the powers, rights, and privileges of a corporation that has been suspended pursuant to Section 23301 or who transacts or attempts to transact intrastate business in this state on behalf of a foreign corporation, the rights and privileges of which have been forfeited pursuant to the section, is punishable by a fine of not less than two hundred fifty dollars ($250) and not exceeding one thousand dollars ($1,000), or by imprisonment not exceeding one year, or both fine and imprisonment.

(b) This section shall not apply to any insurer, or to counsel retained by an insurer on behalf of the suspended corporation, who provides a defense for a suspended corporation in a civil action based upon a claim for personal injury, property damage, or economic losses against the suspended corporation, and, in conjunction with this defense, prosecutes subrogation, contribution, or indemnity rights against persons or entities in the name of the suspended corporation.

(c) Nothing in this section shall create or limit any obligation upon an insurer to defend a suspended corporation.

CHAPTER 857

An act to amend Section 3248 of the Civil Code, and to amend Sections 3400, 7107, 10121, 10127, 10140, 10240.1, 10261, 10262, 10262.5, 10263, and 22300 of, and to add Section 7200 to, the Public Contract Code, relating to public works 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 3248 of the Civil Code is amended to read:

3248. In order to be approved, the payment bond shall satisfy all of the following requirements:

(a) The bond shall be in a sum not less than that prescribed in the following paragraph which is applicable to the total amount payable:

(1) One hundred percent of the total amount payable by the terms of the contract when the total amount payable does not equal or exceed five million dollars ($5,000,000).

(2) Fifty percent of the total amount payable by the terms of the contract when the total amount payable is not less than five million dollars ($5,000,000) and does not exceed ten million dollars ($10,000,000).

(3) Twenty-five percent of the total amount payable by the terms of the contract if the contract exceeds ten million dollars ($10,000,000).

(b) The bond shall provide that if the original contractor or a subcontractor fails to pay (1) any of the persons named in Section 3181, (2) amounts due under the Unemployment Insurance Code with respect to work or labor performed under the contract, or (3) for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the contractor and subcontractors pursuant to Section 13020 of the Unemployment Insurance Code with respect to the work and labor, that the sureties will pay for the same, and also, in case suit is brought upon the bond, a reasonable attorney's fee, to be fixed by the court. The original contractor may require of the subcontractors a bond to indemnify the original contractor for any loss sustained by the original contractor because of any default by the subcontractors under this section.

(c) The bond shall, by its terms, inure to the benefit of any of the persons named in Section 3181 so as to give a right of action to those persons or their assigns in any suit brought upon the bond.

(d) The bond shall be in the form of a bond and not a deposit in lieu of a bond.

SEC. 2. Section 3400 of the Public Contract Code is amended to read:

3400. (a) No agency of the state nor any political subdivision, municipal corporation, or district, nor any public officer or person charged with the letting of contracts for the construction, alteration, or repair of public works shall draft or cause to be drafted specifications for bids, in connection with the construction, alteration, or repair of public works, (1) in such a manner as to limit the bidding, directly or indirectly, to any one specific concern, or (2)

except in those instances where the product is designated to match others in use on a particular public improvement either completed or in the course of completion, calling for a designated material, product, thing, or service by specific brand or trade name unless the specification lists at least two brands or trade names of comparable quality or utility and is followed by the words "or equal" so that bidders may furnish any equal material, product, thing, or service. In applying this section, the specifying agency shall, if aware of an equal product manufactured in this state, name that product in the specification. In those cases involving a unique or novel product application required to be used in the public interest, or where only one brand or trade name is known to the specifying agency, it may list only one. Specifications shall provide a period of time prior to the award of the contract for submission of data substantiating a request for a substitution of "an equal" item.

(b) Subdivision (a) shall not be applicable if the governing body of one of the entities named therein by resolution makes a finding that is included in the specifications that a particular material, product, thing, or service is designated by specific brand or trade name in order that a field test or experiment may be made to determine the product's suitability for future use.

SEC. 3. Section 7107 of the Public Contract Code is amended to read:

7107. (a) This section is applicable with respect to all contracts entered into on or after January 1, 1993, relating to the construction of any public work of improvement.

(b) The retention proceeds withheld from any payment by the public entity from the original contractor, or by the original contractor from any subcontractor, shall be subject to this section.

(c) Within 60 days after the date of completion of the work of improvement, the retention withheld by the public entity shall be released. In the event of a dispute between the public entity and the original contractor, the public entity may withhold from the final payment an amount not to exceed 150 percent of the disputed amount. For purposes of this subdivision, "completion" means any of the following:

(1) The occupation, beneficial use, and enjoyment of a work of improvement, excluding any operation only for testing, startup, or commissioning, by the public agency, or its agent, accompanied by cessation of labor on the work of improvement.

(2) The acceptance by the public agency, or its agent, of the work of improvement.

(3) After the commencement of a work of improvement, a cessation of labor on the work of improvement for a continuous period of 100 days or more, due to factors beyond the control of the contractor.

(4) After the commencement of a work of improvement, a cessation of labor on the work of improvement for a continuous

period of 30 days or more, if the public agency files for record a notice of cessation or a notice of completion.

(d) Subject to subdivision (e), within seven days from the time that all or any portion of the retention proceeds are received by the original contractor, the original contractor shall pay each of its subcontractors from whom retention has been withheld, each subcontractor's share of the retention received. However, if a retention payment received by the original contractor is specifically designated for a particular subcontractor, payment of the retention shall be made to the designated subcontractor, if the payment is consistent with the terms of the subcontract.

(e) The original contractor may withhold from a subcontractor its portion of the retention proceeds if a bona fide dispute exists between the subcontractor and the original contractor. The amount withheld from the retention payment shall not exceed 150 percent of the estimated value of the disputed amount.

(f) In the event that retention payments are not made within the time periods required by this section, the public entity or original contractor withholding the unpaid amounts shall be subject to a charge of 2 percent per month on the improperly withheld amount, in lieu of any interest otherwise due. Additionally, in any action for the collection of funds wrongfully withheld, the prevailing party shall be entitled to attorney's fees and costs.

(g) If a state agency retains an amount greater than 125 percent of the estimated value of the work yet to be completed pursuant to Section 10261, the state agency shall distribute undisputed retention proceeds in accordance with subdivision (c). However, notwithstanding subdivision (c), if a state agency retains an amount equal to or less than 125 percent of the estimated value of the work yet to be completed, the state agency shall have 90 days in which to release undisputed retentions.

(h) Any attempted waiver of the provisions of this section shall be void as against the public policy of this state.

SEC. 4. Section 7200 is added to the Public Contract Code, to read:

7200. (a) (1) This section shall apply with respect to all contracts entered into on or after January 1, 1999, between a public entity and an original contractor, between an original contractor and a subcontractor, and between all subcontractors thereunder, relating to the construction of any public work of improvement.

(2) For purposes of this section, "public entity" means the state, including every state agency, office, department, division, bureau, board, or commission, a city, county, city and county, including chartered cities and chartered counties, district, special district, public authority, political subdivision, public corporation, or nonprofit transit corporation wholly owned by a public agency and formed to carry out the purposes of the public agency.

(b) In a contract between the original contractor and a subcontractor, and in a contract between a subcontractor and any subcontractor thereunder, the percentage of the retention proceeds withheld may not exceed the percentage specified in the contract between the public entity and the original contractor.

(c) When a performance and payment bond is required in the solicitation for bids, subdivision (b) shall not apply to either of the following:

(1) The original contractor, if the subcontractor fails or refuses to provide a performance and payment bond, issued by an admitted surety insurer, to the original contractor.

(2) The subcontractor, if a subcontractor thereunder fails or refuses to provide a performance and payment bond, issued by an admitted surety insurer, to the subcontractor.

(d) No party identified in subdivision (b) shall require any other party to waive any provision of this section.

(e) In the event that the contractor elects to substitute securities in lieu of retentions, the contractor may withhold from his or her subcontractors, who have not elected to substitute securities in lieu of retentions, the amount of retentions that would have otherwise been withheld.

SEC. 5. Section 10121 of the Public Contract Code is amended to read:

10121. The original draft or a certified copy of the plans, specifications, and estimates of cost shall be filed permanently in the office of the department before further action is taken.

SEC. 6. Section 10127 of the Public Contract Code is amended to read:

10127. The department may, with the approval of the State Public Works Board, receive bids for the construction of several public works projects as a single project. Where more than one appropriation has been made for the several projects united as a single project under the provisions of this section, payments for the single project shall be made from the separate appropriations on the proportional basis that may be determined by the department and approved by the Department of Finance. In the case of several projects united as a single project pursuant to this section, those projects shall be within 100 miles of one another.

SEC. 7. Section 10140 of the Public Contract Code is amended to read:

10140. Public notice of a project shall be given by publication once a week for at least two consecutive weeks or once a week for more than two consecutive weeks if the longer period of advertising is deemed necessary by the department, as follows:

(a) In a newspaper of general circulation published in the county in which the project is located, or if located in more than one county, in such a newspaper in a county in which a major portion of the work is to be done.

(b) In a trade paper of general circulation published in San Francisco for projects located in County Group No. 1, as defined in Section 187 of the Streets and Highways Code, or in Los Angeles for projects located in County Group No. 2, as defined in said Section 187, devoted primarily to the dissemination of contract and building news among contracting and building materials supply firms.

The department may publish the notice to bidders for a project in additional trade papers or newspapers of general circulation that it deems advisable.

SEC. 8. Section 10240.1 of the Public Contract Code is amended to read:

10240.1. The claimant may initiate arbitration not later than 90 days after the date of service in person or by mail on the claimant of the final written decision by the department on the claim. This limitation shall not apply to any claim founded on any cost audit, latent defect, warranty, or guarantee under the contract.

SEC. 9. Section 10261 of the Public Contract Code is amended to read:

10261. Payments upon contracts shall be made as the department prescribes upon estimates made and approved by the department, but progress payments shall not be made in excess of 95 percent of the percentage of actual work completed plus a like percentage of the value of material delivered on the ground or stored subject to or under the control of the state, and unused, except as otherwise provided in this section. The department shall withhold not less than 5 percent of the contract price until final completion and acceptance of the project. However, at any time after 95 percent of the work has been completed, the department may reduce the funds withheld to an amount not less than 125 percent of the estimated value of the work yet to be completed, as determined by the department, if the reduction has been approved, in writing, by the surety on the performance bond and by the surety on the payment bond. The Controller shall draw his or her warrants upon estimates so made and approved by the department and the Treasurer shall pay them. The funds may be released by electronic transfer if that procedure is requested by the contractor, in writing, and if the public entity has, in place at the time of the request, the mechanism for the transfer.

SEC. 10. Section 10262 of the Public Contract Code is amended to read:

10262. The contractor shall pay to his or her subcontractors, within 10 days of receipt of each progress payment, the respective amounts allowed the contractor on account of the work performed by his or her subcontractors, to the extent of each subcontractor's interest therein. The payments to subcontractors shall be based on estimates made pursuant to Section 10261. Any diversion by the contractor of payments received for prosecution of a contract, or failure to reasonably account for the application or use of the payments constitutes ground for actions proscribed in Section 10253,

in addition to disciplinary action by the Contractors' State License Board. The subcontractor shall notify, in writing, the Contractors' State License Board and the department of any payment less than the amount or percentage approved for the class or item of work as set forth in Section 10261.

SEC. 11. Section 10262.5 of the Public Contract Code is amended to read:

10262.5. (a) Notwithstanding any other provision of law, a prime contractor or subcontractor shall pay to any subcontractor, not later than 10 days of receipt of each progress payment, the respective amounts allowed the contractor on account of the work performed by the subcontractors, to the extent of each subcontractor's interest therein. In the event that there is a good faith dispute over all or any portion of the amount due on a progress payment from the prime contractor or subcontractor to a subcontractor, then the prime contractor or subcontractor may withhold no more than 150 percent of the disputed amount.

Any contractor who violates this section shall pay to the subcontractor a penalty of 2 percent of the amount due per month for every month that payment is not made. In any action for the collection of funds wrongfully withheld, the prevailing party shall be entitled to his or her attorney's fees and costs.

(b) This section shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to a contractor or a subcontractor in the event of a dispute involving late payment or nonpayment by a contractor or deficient subcontract performance or nonperformance by a subcontractor.

(c) On or before September 1 of each year, the head of each state agency shall submit to the Legislature a report on the number and dollar volume of written complaints received from subcontractors and prime contractors on contracts in excess of three hundred thousand dollars ($300,000), relating to violations of this section.

SEC. 12. Section 10263 of the Public Contract Code is amended to read:

10263. (a) Provisions shall be included in any invitation for bid and in any contract documents to permit the substitution of securities for any moneys withheld by a public agency to ensure performance under a contract. At the request and expense of the contractor, securities equivalent to the amount withheld shall be deposited with the State Treasurer or, a state or federally chartered bank in this state, as the escrow agent, who shall then pay the moneys to the contractor. Upon satisfactory completion of the contract, the securities shall be returned to the contractor.

(b) Alternatively, the contractor may request and the owner shall make payment of retentions earned directly to the escrow agent. The contractor may direct the investment of the payments into securities and the contractor shall receive the interest earned on the investments upon the same terms provided for in this section for

securities deposited by the contractor. Upon satisfactory completion of the contract, the contractor shall receive from the escrow agent all securities, interest, and payments received by the escrow agent from the owner, pursuant to the terms of this section.

(c) Alternatively, and subject to the approval and at the sole discretion of the public agency, the payment of retentions earned may be deposited directly with a person licensed under Division 6 (commencing with Section 17000) of the Financial Code as the escrow agent. Upon written request of an escrow agent who has not been approved by the public agency under this subdivision, the public agency shall provide written notice to that escrow agent within 10 business days of receipt of the request indicating the reason or reasons for not approving that escrow agent. An escrow agent that has been disapproved by the public agency may not maintain any cause of action of any nature against the state or any public agency, officer, agent, or employee of any public agency, in connection with the disapproval of that escrow agent. The payments shall be deposited in a trust account with a federally chartered bank or savings association within 24 hours of receipt by the escrow agent. The contractor shall not place any retentions with the escrow agent in excess of the coverage provided to that escrow agent pursuant to subdivision (b) of Section 17314 of the Financial Code. In all respects not inconsistent with this subdivision, the remaining provisions of this section shall apply to escrow agents acting pursuant to this subdivision. In addition, an escrow agent subject to this subdivision shall maintain insurance to cover negligent acts and omissions of the escrow agent in connection with the handling of retentions under this section in an amount not less than one hundred thousand dollars ($100,000) per contract, executed by an admitted insurer and in a form satisfactory to the public agency.

(d) Securities eligible for investment under this section shall include those listed in Section 16430 of the Government Code, bank or savings and loan certificates of deposit, interest-bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed to by the contractor and the public agency.

The contractor shall be the beneficial owner of any securities substituted for moneys withheld and shall receive any interest thereon.

Failure to include the provisions prescribed by this section in bid and contract documents shall void any provisions for performance retentions in a public agency contract.

(e) (1) Any contractor who elects to receive interest on moneys withheld in retention by a public agency shall, at the request of any subcontractor, make that option available to the subcontractor regarding any moneys withheld in retention by the contractor from the subcontractor. If the contractor elects to receive interest on any moneys withheld in retention by a public agency, then the subcontractor shall receive the identical rate of interest received by

the contractor on any retention moneys withheld from the subcontractor by the contractor, less any actual pro rata costs associated with administering and calculating that interest. In the event that the interest rate is a fluctuating rate, the rate for the subcontractor shall be determined by calculating the interest rate paid during the time that retentions were withheld from the subcontractor. If the contractor elects to substitute securities in lieu of retention, then, by mutual consent of the contractor and subcontractor, the subcontractor may substitute securities in exchange for the release of moneys held in retention by the contractor.

(2) This subdivision shall apply only to those subcontractors performing more than five percent of the contractor's total bid.

(3) No contractor shall require any subcontractor to waive any provision of this section.

(f) The Legislature hereby finds and declares that the provisions of this section are of statewide concern and are necessary to encourage full participation by contractors and subcontractors in public contract procedures.

(g) An escrow agreement used pursuant to this section shall be null, void, and unenforceable unless it is substantially similar to the following form:

ESCROW AGREEMENT FOR
SECURITY DEPOSITS IN LIEU OF RETENTION

This Escrow Agreement is made and entered into by and between _____ whose address is _____ _____ hereinafter called "owner," _____ whose address is _____ _____ hereinafter called "contractor," and _____ whose address is _____ _____ hereinafter called "escrow agent."

For the consideration hereinafter set forth, the owner, contractor, and escrow agent agree as follows:

(1) Pursuant to Section 10263 of the Public Contract Code of the State of California, the contractor has the option to deposit securities with the escrow agent as a substitute for retention earnings required to be withheld by the owner pursuant to the construction contract entered into between the owner and contractor for _____ in the amount of _____ dated _____ (hereafter referred to as the "contract"). Alternatively, on written request of the contractor, the owner shall make payments of the retention earnings directly to the escrow agent. When the contractor deposits the securities as a substitute for the contract earnings, the escrow agent shall notify the

owner within 10 days of the deposit. The market value of the securities at the time of the substitution shall be at least equal to the cash amount then required to be withheld as retention under the terms of the contract between the owner and contractor. Securities shall be held in the name of the _____, and shall designate the contractor as the beneficial owner.

(2) The owner shall make progress payments to the contractor for those funds which otherwise would be withheld from progress payments pursuant to the contract provision, provided that the escrow agent holds securities in the form and amount specified above.

(3) When the owner makes payment of retentions earned directly to the escrow agent, the escrow agent shall hold them for the benefit of the contractor until such time as the escrow created under this contract is terminated. The contractor may direct the investment of the payments into securities. All terms and conditions of this agreement and the rights and responsibilities of the parties shall be equally applicable and binding when the owner pays the escrow agent directly.

(4) The contractor shall be responsible for paying all fees for the expenses incurred by the escrow agent in administering the escrow account. These expenses and payment terms shall be determined by the contractor and escrow agent.

(5) The interest earned on the securities or the money market accounts held in escrow and all interest earned on the interest shall be for the sole account of contractor and shall be subject to withdrawal by contractor at any time and from time to time without notice to the owner.

(6) The contractor shall have the right to withdraw all or any part of the principal in the escrow account only by written notice to the escrow agent accompanied by written authorization from the owner to the escrow agent that the owner consents to the withdrawal of the amount sought to be withdrawn by contractor.

(7) The owner shall have a right to draw upon the securities in the event of default by the contractor. Upon seven days' written notice to the escrow agent from the owner of the default, the escrow agent shall immediately convert the securities to cash and shall distribute the cash as instructed by the owner.

(8) Upon receipt of written notification from the owner certifying that the contract is final and complete, and that the contractor has complied with all requirements and procedures applicable to the contract, the escrow agent shall release to the contractor all securities and interest on deposit less escrow fees and charges of the escrow account. The escrow shall be closed immediately upon disbursement of all moneys and securities on deposit and payments of fees and charges.

(9) The escrow agent shall rely on the written notifications from the owner and the contractor pursuant to Sections (1) to (8),

inclusive, of this agreement and the owner and contractor shall hold the escrow agent harmless from the escrow agent's release, conversion, and disbursement of the securities and interest as set forth above.

(10) The names of the persons who are authorized to give written notice or to receive written notice on behalf of the owner and on behalf of the contractor in connection with the foregoing, and exemplars of their respective signatures are as follows:

On behalf of the owner:	On behalf of the contractor:
Title	Title
Name	Name
Signature	Signature
Address	Address

On behalf of the escrow agent:

Title

Name

Signature

Address

At the time the escrow account is opened, the owner and contractor shall deliver to the escrow agent a fully executed counterpart of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement by their proper officers on the date first set forth above.

Owner	Contractor
Title	Title
Name	Name
Signature	Signature

SEC. 13. Section 22300 of the Public Contract Code is amended to read:

22300. (a) Provisions shall be included in any invitation for bid and in any contract documents to permit the substitution of securities for any moneys withheld by a public agency to ensure performance under a contract; however, substitution of securities provisions shall not be required in contracts in which there will be financing provided by the Farmers Home Administration of the United States Department of Agriculture pursuant to the Consolidated Farm and Rural Development Act (7 U.S.C. Sec. 1921 et seq.), and where federal regulations or policies, or both, do not allow the substitution of securities. At the request and expense of the contractor, securities equivalent to the amount withheld shall be deposited with the public agency, or with a state or federally chartered bank in this state as the escrow agent, who shall then pay those moneys to the contractor. Upon satisfactory completion of the contract, the securities shall be returned to the contractor.

(b) Alternatively, the contractor may request and the owner shall make payment of retentions earned directly to the escrow agent at the expense of the contractor. At the expense of the contractor, the contractor may direct the investment of the payments into securities and the contractor shall receive the interest earned on the investments upon the same terms provided for in this section for securities deposited by the contractor. Upon satisfactory completion of the contract, the contractor shall receive from the escrow agent all securities, interest, and payments received by the escrow agent from the owner, pursuant to the terms of this section.

(c) Securities eligible for investment under this section shall include those listed in Section 16430 of the Government Code, bank or savings and loan certificates of deposit, interest-bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed to by the contractor and the public agency.

The contractor shall be the beneficial owner of any securities substituted for moneys withheld and shall receive any interest thereon.

Failure to include these provisions in bid and contract documents shall void any provisions for performance retentions in a public agency contract.

For purposes of this section, the term "public agency" shall include, but shall not be limited to, chartered cities.

(d) (1) Any contractor who elects to receive interest on moneys withheld in retention by a public agency shall, at the request of any subcontractor, make that option available to the subcontractor regarding any moneys withheld in retention by the contractor from the subcontractor. If the contractor elects to receive interest on any moneys withheld in retention by a public agency, then the subcontractor shall receive the identical rate of interest received by the contractor on any retention moneys withheld from the subcontractor by the contractor, less any actual pro rata costs associated with administering and calculating that interest. In the

event that the interest rate is a fluctuating rate, the rate for the subcontractor shall be determined by calculating the interest rate paid during the time that retentions were withheld from the subcontractor. If the contractor elects to substitute securities in lieu of retention, then, by mutual consent of the contractor and subcontractor, the subcontractor may substitute securities in exchange for the release of moneys held in retention by the contractor.

(2) This subdivision shall apply only to those subcontractors performing more than five percent of the contractor's total bid.

(3) No contractor shall require any subcontractor to waive any provision of this section.

(e) The Legislature hereby declares that the provisions of this section are of statewide concern and are necessary to encourage full participation by contractors and subcontractors in public contract procedures.

(f) The escrow agreement used hereunder shall be null, void, and unenforceable unless it is substantially similar to the following form:

ESCROW AGREEMENT FOR
SECURITY DEPOSITS IN LIEU OF RETENTION

This Escrow Agreement is made and entered into by and between _____
_____ whose address is _____
_____ hereinafter called "Owner,"
_____ whose address is _____
_____ hereinafter called "Contractor" and
_____ whose address is _____
_____ hereinafter called "Escrow Agent."

For the consideration hereinafter set forth, the Owner, Contractor, and Escrow Agent agree as follows:

(1) Pursuant to Section 22300 of the Public Contract Code of the State of California, Contractor has the option to deposit securities with Escrow Agent as a substitute for retention earnings required to be withheld by Owner pursuant to the Construction Contract entered into between the Owner and Contractor for _____ in the amount of _____ dated _____ (hereinafter referred to as the "Contract"). Alternatively, on written request of the Contractor, the Owner shall make payments of the retention earnings directly to the Escrow Agent. When the Contractor deposits the securities as a substitute for Contract earnings, the Escrow Agent shall notify the Owner within 10 days of the deposit. The market value of the securities at the time of the substitution shall be at least equal to the cash amount then required to be withheld as retention under the terms of the Contract between the Owner and Contractor. Securities

shall be held in the name of _____, and shall designate the Contractor as the beneficial owner.

(2) The Owner shall make progress payments to the Contractor for those funds which otherwise would be withheld from progress payments pursuant to the Contract provisions, provided that the Escrow Agent holds securities in the form and amount specified above.

(3) When the Owner makes payment of retentions earned directly to the Escrow Agent, the Escrow Agent shall hold them for the benefit of the Contractor until the time that the escrow created under this contract is terminated. The Contractor may direct the investment of the payments into securities. All terms and conditions of this agreement and the rights and responsibilities of the parties shall be equally applicable and binding when the Owner pays the Escrow Agent directly.

(4) Contractor shall be responsible for paying all fees for the expenses incurred by Escrow Agent in administering the Escrow Account and all expenses of the Owner. These expenses and payment terms shall be determined by the Owner, Contractor, and Escrow Agent.

(5) The interest earned on the securities or the money market accounts held in escrow and all interest earned on that interest shall be for the sole account of Contractor and shall be subject to withdrawal by Contractor at any time and from time to time without notice to the Owner.

(6) Contractor shall have the right to withdraw all or any part of the principal in the Escrow Account only by written notice to Escrow Agent accompanied by written authorization from the Owner to the Escrow Agent that Owner consents to the withdrawal of the amount sought to be withdrawn by Contractor.

(7) The Owner shall have a right to draw upon the securities in the event of default by the Contractor. Upon seven days' written notice to the Escrow Agent from the owner of the default, the Escrow Agent shall immediately convert the securities to cash and shall distribute the cash as instructed by the Owner.

(8) Upon receipt of written notification from the Owner certifying that the Contract is final and complete, and that the Contractor has complied with all requirements and procedures applicable to the Contract, Escrow Agent shall release to Contractor all securities and interest on deposit less escrow fees and charges of the Escrow Account. The escrow shall be closed immediately upon disbursement of all moneys and securities on deposit and payments of fees and charges.

(9) Escrow Agent shall rely on the written notifications from the Owner and the Contractor pursuant to Sections (5) to (8), inclusive, of this Agreement and the Owner and Contractor shall hold Escrow Agent harmless from Escrow Agent's release and disbursement of the securities and interest as set forth above.

(10) The names of the persons who are authorized to give written notice or to receive written notice on behalf of the Owner and on behalf of Contractor in connection with the foregoing, and exemplars of their respective signatures are as follows:

On behalf of Owner:	On behalf of Contractor:
Title	Title
Name	Name
Signature	Signature
Address	Address

On behalf of Escrow Agent:

Title

Name

Signature

Address

At the time the Escrow Account is opened, the Owner and Contractor shall deliver to the Escrow Agent a fully executed counterpart of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement by their proper officers on the date first set forth above.

Owner	Contractor
Title	Title
Name	Name
Signature	Signature

SEC. 14. The provisions of this act shall apply only with respect to contracts entered into on or after January 1, 1999.

CHAPTER 858

An act to amend Sections 3773, 4014, 7571, 7572, 7573, and 7575 of the Family Code, to amend Section 102766 of the Health and Safety Code, to amend Section 1088.5 of the Unemployment Insurance Code, and to amend Sections 11475.8, 11478.1, 11478.2, and 16576 of, to repeal Section 16576.5 of, and to repeal and add Section 16577 of, the Welfare and Institutions Code, relating to spousal and child support.

[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 3773 of the Family Code is amended to read:

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

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

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

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

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

SEC. 2. Section 4014 of the Family Code is amended to read:

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

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

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

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

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

(d) The Judicial Council shall develop forms to implement this section. The forms shall be developed so as not to delay the implementation of the Statewide Child Support Registry described in Section 16576 of the Welfare and Institutions Code and shall be available no later than 30 days prior to the implementation of the Statewide Child Support Registry.

SEC. 3. 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 forward the completed declaration to the State Department of Social Services, and, if requested, shall transmit a copy of the declaration to the district attorney of the county where the birth occurred. A copy of the declaration shall be made available to each of the attesting parents.

(b) No health care provider shall be subject to any civil, criminal, or administrative liability for any negligent act or omission relative

to the accuracy of the information provided, or for filing the declaration with the appropriate state or local agencies.

(c) The district attorney shall pay the sum of ten dollars ($10) to birthing hospitals and other entities that provide prenatal services for each completed declaration of paternity that is filed with the State Department of Social Services, 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 Department of Social Services at any time after the child's birth.

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

(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 Department of Social Services.

(g) The district attorney may, at his or her option, pay the sum of ten dollars ($10) to local registrars of births 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 Department of Social Services. 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 Department of Social Services 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. 4. Section 7572 of the Family Code is amended to read:

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

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

(1) A signed voluntary declaration of paternity that is filed with the State Department of Social Services legally establishes paternity.

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

(3) An alleged father's constitutional rights to have the issue of paternity decided by a court; to notice of any hearing on the issue of paternity; to have an opportunity to present his case to the court, including his right to present and cross-examine witnesses; to have an attorney represent him; and to have an attorney appointed to represent him if he cannot afford one in a paternity action filed by the district attorney.

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

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

(d) The State Department of Social Services shall, free of charge, make available to hospitals, clinics, and other places of birth any and all informational and training materials for the program under this chapter, as well as the paternity declaration form. The State Department of Social Services shall make training available to every participating hospital, clinic, local registrar of births and deaths, and other place of birth no later than June 30, 1999.

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

SEC. 5. Section 7573 of the Family Code is amended to read:

7573. Except as provided in Sections 7575, 7576, and 7577, a completed voluntary declaration of paternity, as described in Section 7574, that has been filed with the State Department of Social Services shall establish the paternity of a child and shall have the same force and effect as a judgment for paternity issued by a court of competent jurisdiction. The voluntary declaration of paternity shall be recognized as a basis for the establishment of an order for child custody, visitation, or child support.

SEC. 6. 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 Department of Social Services within 60 days of the date of execution of the declaration by the attesting father or attesting mother, whichever signature is later, unless a court order for custody, visitation, or child support has been entered in an action in which the signatory seeking to rescind was a party. The State Department of Social Services shall develop a form to be used by parents to rescind the declaration of paternity and instruction on how to complete and file the rescission with the State Department of Social Services. 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 Department of Social Services. The form and instructions shall be written in simple, easy to understand language and shall be made available at the local family support office and the office of local registrar of births and deaths.

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

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

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

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

declaration of paternity must be filed shall commence on the date that the court makes a finding of paternity based upon the voluntary declaration of paternity in an action for custody, visitation, or child support.

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

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

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

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

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

SEC. 7. Section 102766 of the Health and Safety Code is amended to read:

102766. (a) When a voluntary declaration of paternity is filed with the State Department of Social Services pursuant to subdivision (d) of Section 7571 of the Family Code, an application may be submitted to the State Registrar requesting that the father's name be added to the child's birth certificate.

(b) Upon receipt of the application and payment of the required fee, the State Registrar shall review the application for acceptance for filing, and if accepted, shall establish a new birth certificate for the child in the manner prescribed in Article 1 (commencing with Section 102625), if the original record of birth is on file in the office of the State Registrar.

SEC. 8. Section 1088.5 of the Unemployment Insurance Code is amended to read:

1088.5. (a) In addition to information reported in accordance with Section 1088, effective July 1, 1998, each employer shall file, with the department, the information provided for in subdivision (b) on new employees.

(b) Each employer shall report the hiring of any employee who works in this state and to whom the employer anticipates paying wages.

(c) (1) This section shall not apply to any department, agency, or instrumentality of the United States.

(2) State agency employers shall not be required to report employees performing intelligence or counterintelligence functions, if the head of the agency has determined that reporting pursuant to this section would endanger the safety of the employee or compromise an ongoing investigation or intelligence mission.

(d) (1) Employers shall submit a report as described in paragraph (4) within 20 days of hiring any employee whom the employer is required to report pursuant to this section.

(2) Notwithstanding subdivision (a), employers transmitting reports magnetically or electronically shall submit the report by two monthly transmissions not less than 12 days no more than 16 days apart.

(3) For purposes of this section, an employer that has employees in two or more states and that transmits reports magnetically or electronically may designate one state in which the employer has employees to which the employer will transmit the report described in paragraph (4). Any employer that transmits reports pursuant to this paragraph shall notify the Secretary of Health and Human Services in writing as to which state the employer designates for the purpose of sending reports.

(4) The report shall contain the following:

(A) The name, address, and social security number of the employees.

(B) The employer's name, address, state employer identification number (if one has been issued), and identifying number assigned to the employer under Section 6109 of the Internal Revenue Code of 1986.

(C) The first date the employee worked.

(5) Employers may report pursuant to this section by submitting a copy of the employee's W-4 form, a form provided by the department, or any other hiring document transmitted by first-class mail, magnetically, or electronically.

(e) For each failure to report the hiring of an employee, as required and within the time required by this section, unless the failure is due to good cause, the department may assess a penalty of twenty-four dollars ($24), or four hundred ninety dollars ($490) if the failure is the result of conspiracy between the employer and employee not to supply the required report or to supply a false or incomplete report.

(f) Information collected pursuant to this section may be used for the following purposes:

(1) Administration of this code.

(2) Locating individuals for purposes of establishing paternity and establishing, modifying, and enforcing child support obligations.

(3) Administration of employment security and workers' compensation programs.

(4) Providing employer or employee information to the Franchise Tax Board for the purpose of tax enforcement.

(5) Verification of eligibility of applicants for, or recipients of, the public assistance programs listed in Section 1320b-7(b) of Title 42 of the United States Code.

(g) For purposes of this section, "employer" includes a labor union hiring hall.

(h) This section shall become operative on July 1, 1998.

SEC. 9. Section 11475.8 of the Welfare and Institutions Code is amended to read:

11475.8. (a) The Legislature finds and declares all of the following:

(1) The Legislative Analyst has found that county child support enforcement programs provide a net increase in revenues to the state.

(2) The state has a fiscal interest in ensuring that county child support enforcement programs perform efficiently.

(3) The state does not provide information to counties on child support enforcement programs, based on common denominators that would facilitate comparison of program performance.

(4) Providing this information would allow county officials to monitor program performance and to make appropriate modifications to improve program efficiency.

(5) This information is required for effective management of the child support program.

(b) (1) Except as provided in paragraph (2), commencing with the 1998–99 fiscal year, and for each fiscal year thereafter, each county that is participating in the state incentive program described in Section 15200.81 shall provide to the department, and the department shall compile from this county child support information, quarterly and annually, all of the following performance-based data, as established by the federal incentive funding system, provided that the department may revise the data required by this paragraph in order to conform to the final federal incentive system data definitions:

(A) One of the following data relating to paternity establishment, as required by the department, provided that the department shall require all counties to report on the same measurement:

(i) The total number of children in the caseload governed by Subtitle D (commencing with Section 450) of Title IV of the federal Social Security Act (42 U.S.C. Sec. 650 et seq.), as of the end of the federal fiscal year, who were born to unmarried parents for whom paternity was established or acknowledged, and the total number of

children in that caseload, as of the end of the preceding federal fiscal year, who were born to unmarried parents.

(ii) The total number of minor children who were born in the state to unmarried parents for whom paternity was established or acknowledged during a federal fiscal year, and the total number of children in the state born to unmarried parents during the preceding federal fiscal year.

(B) The number of cases governed by Subtitle D (commencing with Section 450) of Title IV of the federal Social Security Act (42 U.S.C. Sec. 650 et seq.) during the federal fiscal year and the total number of those cases with support orders.

(C) The total dollars collected during the federal fiscal year for current support in cases governed by Subtitle D (commencing with Section 450) of Title IV of the federal Social Security Act (42 U.S.C. Sec. 650 et seq.) and the total number of dollars owing for current support during that federal fiscal year in cases governed by those provisions.

(D) The total number of cases for the federal fiscal year governed by Subtitle D (commencing with Section 450) of Title IV of the federal Social Security Act (42 U.S.C. Sec. 650 et seq.) in which payment was being made toward child support arrearages and the total number of cases for that fiscal year governed by these federal provisions that had child support arrearages.

(E) The total number of dollars collected and expended during a federal fiscal year in cases governed by Subtitle D (commencing with Section 450) of Title IV of the federal Social Security Act (42 U.S.C. Sec. 650 et seq.).

(F) The total amount of child support dollars collected during a federal fiscal year, and, if and when required by federal law, the amount of these collections broken down by collections distributed on behalf of current recipients of federal Temporary Assistance for Needy Families block grant funds or federal foster care funds, on behalf of former recipients of federal Temporary Assistance for Needy Families block grant funds or federal foster care funds, or on behalf of persons who have never been recipients of these federal funds.

(2) A county may apply for an exemption from any or all of the reporting requirements of paragraph (1) for the 1998–99 state fiscal year or any quarter of that fiscal year, as well as for the first quarter of the 1999–2000 fiscal year, by submitting an application for the exemption to the department at least three months prior to the commencement of the fiscal year or quarter for which the exemption is sought. A county shall provide a separate justification for each data element under paragraph (1) for which the county is seeking an exemption and the cost to the county of providing the data. The department may not grant an exemption for more than one year. The department may grant a single exemption only if both of the following conditions are met:

(A) The county cannot compile the data being sought through its existing automated system or systems.

(B) The county cannot compile the data being sought through manual means or through an enhanced automated system or systems without significantly harming the child support collection efforts of the county.

(c) Except as provided in paragraph (6), before implementation of the state child support computers, the statewide automated system, and the Los Angeles Automated Child Support Enforcement Replacement System (ARS), in addition to the information required by subdivision (b), the department shall collect, on a monthly basis, from each county that is participating in the state incentive program described in Section 15200.81, information on the county child support enforcement program beginning with the 1998–99 fiscal year, and for each subsequent fiscal year, and shall report quarterly and annually on all of the following measurements:

(1) For each of the following support collection categories, the number of cases with support collected shall include only the number of cases actually receiving a collection, not the number of payments received. For purposes of determining the number of cases with an order of current support and the number of cases in which current support is being collected, cases with a medical support order that do not have an order for current support shall not be counted.

(A) The number of cases with an order for current support.

(B) The number of cases with collections of current support.

(C) The number of cases with an order for arrears.

(D) The number of cases with arrears collections.

(2) The number of alleged fathers or obligors who were served with a summons and complaint to establish paternity or a support order. In order to be counted under this paragraph, the alleged father or obligor shall be successfully served with process. An alleged father shall be counted under this paragraph only once if he is served with process simultaneously for both a paternity and a support order proceeding for the same child or children. For purposes of this paragraph, a support order shall include a medical support order.

(3) The number of children requiring paternity establishment and the number of children for whom paternity has been established during the period. Paternity may only be established once for each child. Any child for whom paternity is not at issue shall not be counted in the number of children for whom paternity has been established. For this purpose, paternity is not at issue if the parents were married and neither parent challenges paternity or a voluntary paternity declaration has been executed by the parents prior to the county child support enforcement program obtaining the case and neither parent challenges paternity.

(4) The number of cases requiring that a support order be established and the number of cases that had a support order established during the period. A support order shall be counted as

established only when the appropriate court has issued an order for child support, including an order for temporary child support, or an order for medical support.

(5) The total cost of administering the county child support enforcement program, including the federal, state, and county share of the costs, and the federal and state incentives received by each county. The total cost of administering the program shall be broken down by the following:

(A) The direct costs of the program, broken down further by total employee salaries and benefits, a list of the number of employees broken down into at least the following categories: attorneys, administrators, caseworkers, investigators, and clerical support; contractor costs; space charges; and payments to other county agencies. Employee salaries and numbers need only be reported in the annual report.

(B) The indirect costs, showing all overhead charges.

(6) A county may apply for an exemption from any or all of the reporting requirements of this subdivision for a fiscal year by submitting an application for the exemption to the department at least three months prior to the commencement of the fiscal year or quarter for which the exemption is sought. A county shall provide a separate justification for each data element under this subdivision for which the county is seeking an exemption and the cost to the county of providing the data. The department may not grant an exemption for more than one year. The department may grant a single exemption only if both of the following conditions are met:

(A) The county cannot compile the data being sought through its existing automated system or systems.

(B) The county cannot compile the data being sought through manual means or through an enhanced automated system or systems without significantly harming the child support collection efforts of the county.

(d) After implementation of the statewide automated system, and ARS, in addition to the information required by subdivision (b), the department shall collect, on a monthly basis, from each county that is participating in the state incentive program described in Section 15200.81, information on the county child support enforcement program beginning with the 1998–99 fiscal year or a later fiscal year, as appropriate, and for each subsequent fiscal year, and shall report quarterly and annually on all of the following measurements:

(1) For each of the following support collection categories, the number of cases with support collected shall include only the number of cases actually receiving a collection, not the number of payments received.

(A) (i) The number of cases with collections for current support.

(ii) The number of cases with arrears collections only.

(iii) The number of cases with both current support and arrears collections.

(B) For cases with current support only due.

(i) The number of cases in which the full amount of current support owed was collected.

(ii) The number of cases in which some amount of current support, but less than the full amount of support owed, was collected.

(iii) The number of cases in which no amount of support owed was collected.

(C) For cases in which arrears only were owed:

(i) The number of cases in which all arrears owed were collected.

(ii) The number of cases in which some amount of arrears, but less than the full amount of arrears owed, were collected.

(iii) The number of cases in which no amount of arrears owed were collected.

(D) For cases in which both current support and arrears are owed:

(i) The number of cases in which the full amount of current support and arrears owed were collected.

(ii) The number of cases in which some amount of current support and arrears, but less than the full amount of support owed, were collected.

(iii) The number of cases in which no amount of support owed was collected.

(E) The total number of cases in which an amount was due for current support only.

(F) The total number of cases in which an amount was due for both current support and arrears.

(G) The total number of cases in which an amount was due for arrears only.

(H) For cases with current support due, the number of cases without orders for medical support and the number of cases with an order for medical support.

(2) The number of alleged fathers or obligors who were served with a summons and complaint to establish paternity or a support order, and the number of alleged fathers or obligors for whom it is required that paternity or a support order be established. In order to be counted under this paragraph, the alleged father or obligor shall be successfully served with process. An alleged father shall be counted under this paragraph only once if he is served with process simultaneously for both a paternity and a support order proceeding for the same child or children. For purposes of this paragraph, a support order shall include a medical support order.

(3) The number of new asset seizures or successful initial collections on a wage assignment for purposes of child support collection. For purposes of this paragraph, a collection made on a wage assignment shall be counted only once for each wage assignment issued.

(4) The number of children requiring paternity establishment and the number of children for whom paternity has been established during the period. Paternity may only be established once for each

child. Any child for whom paternity is not at issue shall not be counted in the number of children for whom paternity has been established. For this purpose, paternity is not at issue if the parents were married and neither parent challenges paternity or a voluntary paternity declaration has been executed by the parents prior to the county child support enforcement program obtaining the case and neither parent challenges paternity.

(5) The number of cases requiring that a support order be established and the number of cases that had a support order established during the period. A support order shall be counted as established only when the appropriate court has issued an order for child support, including an order for temporary child support, or an order for medical support.

(6) The total cost of administering the county child support enforcement program, including the federal, state, and county share of the costs and the federal and state incentives received by each county. The total cost of administering the program shall be broken down by the following:

(A) The direct costs of the program, broken down further by total employee salaries and benefits, a list of the number of employees broken down into at least the following categories: attorneys, administrators, caseworkers, investigators, and clerical support; contractor costs; space charges; and payments to other county agencies. Employee salaries and numbers need only be reported in the annual report.

(B) The indirect costs, showing all overhead charges.

(7) The total child support collections due, broken down by current support, interest on arrears, and principal, and the total child support collections that have been collected, broken down by current support, interest on arrears, and principal.

(8) The actual case status for all cases in the county child support enforcement program. Each case shall be reported in one case status only. If a case falls within more than one status category, it shall be counted in the first status category of the list set forth below in which it qualifies. The following shall be the case status choices:

(A) No support order, location of obligor parent required.

(B) No support order, alleged obligor parent located and paternity required.

(C) No support order, location and paternity not at issue but support order must be established.

(D) Support order established with current support obligation and obligor is in compliance with support obligation.

(E) Support order established with current support obligation, obligor is in arrears and location of obligor is necessary.

(F) Support order established with current support obligation, obligor is in arrears, and location of obligor's assets is necessary.

(G) Support order established with current support obligation, obligor is in arrears and no location of obligor or obligor's assets is necessary.

(H) Support order established with current support obligation, obligor is in arrears, the obligor is located, but the district attorney has established satisfactorily that the obligor has no income or assets and no ability to earn.

(I) Support order established with current support obligation and arrears, obligor is paying the current support and is paying some or all of the interest on the arrears, but is paying no principal.

(J) Support order established for arrears only and obligor is current in repayment obligation.

(K) Support order established for arrears only, obligor is not current in arrears repayment schedule and location of obligor is required.

(L) Support order established for arrears only, obligor is not current in arrears repayment schedule and location of obligor's assets is required.

(M) Support order established for arrears only, obligor is not current in arrears repayment schedule, and no location of obligor or obligor's assets is required.

(N) Support order established for arrears only, obligor is not current in arrears repayment, and the obligor is located, but the district attorney has established satisfactorily that the obligor has no income or assets and no ability to earn.

(O) Support order established for arrears only and obligor is repaying some or all of the interest, but no principal.

(P) Other, if necessary, to be defined in the regulations promulgated under subdivision (e).

(e) Upon implementation of the statewide automated system, and ARS, or at such time as the department determines that compliance with this subdivision is possible, each county that is participating in the state incentive program described in Section 15200.81 shall collect and report, and the department shall compile for each participating county, information on the county child support program in each fiscal year, all of the following data, in a manner that facilitates comparison of counties and the entire state, except that the department may eliminate or modify the requirement to report any data mandated to be reported pursuant to this subdivision if the department determines that the district attorneys are unable to accurately collect and report the information or that collecting and reporting of the data by the district attorneys will be onerous:

(1) The number of alleged obligors or fathers who receive CalWORKs benefits, food stamp benefits, and Medi-Cal benefits.

(2) The number of obligors or alleged fathers who were in state prison or county jail.

(3) The number of obligors or alleged fathers who do not have a social security number.

(4) The number of obligors or alleged fathers whose address is unknown.

(5) The number of obligors or alleged fathers whose complete name, consisting of at least a first and last name, is not known by the county district attorney's office.

(6) The number of obligors or alleged fathers who filed a tax return with the Franchise Tax Board in the last year for which a data match is available.

(7) The number of obligors or alleged fathers who have no income reported to the Employment Development Department during the third quarter of the fiscal year.

(8) The number of obligors or alleged fathers who have income between one dollar ($1) and five hundred dollars ($500) reported to the Employment Development Department during the third quarter of the fiscal year.

(9) The number of obligors or alleged fathers who have income between five hundred one dollars ($501) and one thousand five hundred dollars ($1,500) reported to the Employment Development Department during the third quarter of the fiscal year.

(10) The number of obligors or alleged fathers who have income between one thousand five hundred one dollars ($1,501) and two thousand five hundred dollars ($2,500) reported to the Employment Development Department during the third quarter of the fiscal year.

(11) The number of obligors or alleged fathers who have income between two thousand five hundred one dollars ($2,501) and three thousand five hundred dollars ($3,500) reported to the Employment Development Department during the third quarter of the fiscal year.

(12) The number of obligors or alleged fathers who have income between three thousand five hundred one dollars ($3,501) and four thousand five hundred dollars ($4,500) reported to the Employment Development Department during the third quarter of the fiscal year.

(13) The number of obligors or alleged fathers who have income between four thousand five hundred one dollars ($4,501) and five thousand five hundred dollars ($5,500) reported to the Employment Development Department during the third quarter of the fiscal year.

(14) The number of obligors or alleged fathers who have income between five thousand five hundred one dollars ($5,501) and six thousand five hundred dollars ($6,500) reported to the Employment Development Department during the third quarter of the fiscal year.

(15) The number of obligors or alleged fathers who have income between six thousand five hundred one dollars ($6,501) and seven thousand five hundred dollars ($7,500) reported to the Employment Development Department during the third quarter of the fiscal year.

(16) The number of obligors or alleged fathers who have income between seven thousand five hundred one dollars ($7,501) and nine thousand dollars ($9,000) reported to the Employment Development Department during the third quarter of the fiscal year.

(17) The number of obligors or alleged fathers who have income exceeding nine thousand dollars ($9,000) reported to the Employment Development Department during the third quarter of the fiscal year.

(18) The number of obligors or alleged fathers who have two or more employers reporting earned income to the Employment Development Department during the third quarter of the fiscal year.

(19) The number of obligors or alleged fathers who receive unemployment benefits during the third quarter of the fiscal year.

(20) The number of obligors or alleged fathers who receive state disability benefits during the third quarter of the fiscal year.

(21) The number of obligors or alleged fathers who receive workers' compensation benefits during the third quarter of the fiscal year.

(22) The number of obligors or alleged fathers who receive Social Security Disability Insurance benefits during the third quarter of the fiscal year.

(23) The number of obligors or alleged fathers who receive Supplemental Security Income/State Supplementary Program for the Aged, Blind and Disabled benefits during the third quarter of the fiscal year.

(f) The department, in consultation with the Legislative Analyst's office, the Judicial Council, the California Family Support Council, and child support advocates, shall develop regulations to ensure that all county child support enforcement programs report the data required by this section uniformly and consistently throughout California.

(g) The department shall provide the information for all participating counties for the 1998–99 fiscal year to each member of a county board of supervisors, county executive officer, district attorney, and the appropriate policy committees and fiscal committees of the Legislature by December 31, 1999. The department shall provide the information for each subsequent fiscal quarter and fiscal year no later than three months following the end of the fiscal quarter and no later than nine months following the end of the fiscal year. The department shall present the information in a manner that facilitates comparison of county performance.

(h) For purposes of this section, "case" means a noncustodial parent, whether mother, father, or putative father, who is, or eventually may be, obligated under law for support of a child or children. For purposes of this definition, a noncustodial parent shall be counted once for each family that has a dependent child he or she may be obligated to support.

(i) This section shall be operative only for as long as Section 15200.92 requires participating counties to report data to the department.

SEC. 10. Section 11478.1 of the Welfare and Institutions Code is amended to read:

11478.1. (a) It is the intent of the Legislature to protect individual rights of privacy, and to facilitate and enhance the effectiveness of the child and spousal support enforcement program, by ensuring the confidentiality of support enforcement and child abduction records, and to thereby encourage the full and frank disclosure of information relevant to all of the following:

(1) The establishment or maintenance of parent and child relationships and support obligations.

(2) The enforcement of the child support liability of absent parents.

(3) The enforcement of spousal support liability of the spouse or former spouse to the extent required by the state plan under Section 11475.2 of this code and Chapter 6 (commencing with Section 4900) of Part 5 of Division 9 of the Family Code.

(4) The location of absent parents.

(5) The location of parents and children abducted, concealed, or detained by them.

(b) (1) Except as provided in subdivision (c), all files, applications, papers, documents, and records established or maintained by any public entity pursuant to the administration and implementation of the child and spousal support enforcement program established pursuant to Part D (commencing with Section 651) of Subchapter IV of Chapter 7 of Title 42 of the United States Code and this article, shall be confidential, and shall not be open to examination or released for disclosure for any purpose not directly connected with the administration of the child and spousal support enforcement program. No public entity shall disclose any file, application, paper, document, or record, or the information contained therein, except as expressly authorized by this section.

(2) In no case shall information be released or the whereabouts of one party or the child disclosed to another party, or to the attorney of any other party, if a protective order has been issued by a court or administrative agency with respect to the former party, a good cause claim under Section 11477.04 has been approved or is pending, or the public agency responsible for establishing paternity or enforcing support has reason to believe that the release of the information may result in physical or emotional harm to the former party or the child.

(3) Notwithstanding any other provision of law, a proof of service filed by the district attorney shall not disclose the address where service of process was accomplished. Instead, the district attorney shall keep the address in his or her own records. The proof of service shall specify that the address is on record at the district attorney's office and that the address may be released only upon an order from the court pursuant to paragraph (6) of subdivision (c).

(c) Disclosure of the information described in subdivision (b) is authorized as follows:

(1) All files, applications, papers, documents and records as described in subdivision (b) shall be available and may be used by a

public entity for all administrative, civil, or criminal investigations, actions, proceedings, or prosecutions conducted in connection with the administration of the child and spousal support enforcement program approved under Part D (commencing with Section 651) of Subchapter IV of Chapter 7 of Title 42 of the United States Code, and any other plan or program described in Section 303.21 of Title 45 of the Code of Federal Regulations.

(2) A document requested by a person who wrote, prepared, or furnished the document may be examined by or disclosed to that person or his or her designee.

(3) The payment history of an obligor pursuant to a support order may be examined by or released to the court, the obligor, or the person on whose behalf enforcement actions are being taken or that person's designee.

(4) Income and expense information of either parent may be released to the other parent for the purpose of establishing or modifying a support order.

(5) Public records subject to disclosure under the Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of the Government Code) may be released.

(6) After a noticed motion and a finding by the court, in a case in which establishment or enforcement actions are being taken, that release or disclosure to the obligor or obligee is required by due process of law, the court may order a public entity that possesses an application, paper, document, or record as described in subdivision (b) to make that item available to the obligor or obligee for examination or copying, or to disclose to the obligor or obligee the contents of that item. Article 9 (commencing with Section 1040) of Chapter 4 of Division 3 of the Evidence Code shall not be applicable to proceedings under this part. At any hearing of a motion filed pursuant to this section, the court shall inquire of the district attorney and the parties appearing at the hearing if there is reason to believe that release of the requested information may result in physical or emotional harm to a party. If the court determines that harm may occur, the court shall issue any protective orders or injunctive orders restricting the use and disclosure of the information as are necessary to protect the individuals.

(7) To the extent not prohibited by federal law or regulation, information indicating the existence or imminent threat of a crime against a minor child, or location of a concealed, detained, or abducted child or the location of the concealing, detaining, or abducting person, may be disclosed to any district attorney, any appropriate law enforcement agency, or to any state or county child protective agency, or may be used in any judicial proceedings to prosecute that crime or to protect the child.

(8) The social security number, most recent address, and the place of employment of the absent parent may be released to an authorized person as defined in Section 653(c) of Title 42 of the United States

Code, only if the authorized person has filed a request for the information, and only if the information has been provided to the California Parent Locator Service by the federal Parent Locator Service pursuant to Section 653 of Title 42 of the United States Code.

(d) (1) "Administration and implementation of the child and spousal support enforcement program," as used in this section, means the carrying out of the state and local plans for establishing, modifying, and enforcing child support obligations, enforcing spousal support orders, and determining paternity pursuant to Part D (commencing with Section 651) of Subchapter IV of Chapter 7 of Title 42 of the United States Code and this article.

(2) For purposes of this section, "obligor" means any person owing a duty of support.

(3) As used in this chapter, "putative parent" shall refer to any person reasonably believed to be the parent of a child for whom the district attorney is attempting to establish paternity or establish, modify, or enforce support pursuant to Section 11475.1.

(e) Any person who willfully, knowingly, and intentionally violates this section is guilty of a misdemeanor.

(f) Nothing in this section shall be construed to compel the disclosure of information relating to a deserting parent who is a recipient of aid under a public assistance program for which federal aid is paid to this state, if that information is required to be kept confidential by the federal law or regulations relating to the program.

SEC. 10.5. Section 11478.1 of the Welfare and Institutions Code is amended to read:

11478.1. (a) It is the intent of the Legislature to protect individual rights of privacy, and to facilitate and enhance the effectiveness of the child and spousal support enforcement program, by ensuring the confidentiality of support enforcement and child abduction records, and to thereby encourage the full and frank disclosure of information relevant to all of the following:

(1) The establishment or maintenance of parent and child relationships and support obligations.

(2) The enforcement of the child support liability of absent parents.

(3) The enforcement of spousal support liability of the spouse or former spouse to the extent required by the state plan under Section 11475.2 of this code and Chapter 6 (commencing with Section 4900) of Part 5 of Division 9 of the Family Code.

(4) The location of absent parents.

(5) The location of parents and children abducted, concealed, or detained by them.

(b) (1) Except as provided in subdivision (c), all files, applications, papers, documents, and records established or maintained by any public entity pursuant to the administration and implementation of the child and spousal support enforcement program established pursuant to Part D (commencing with Section

651) of Subchapter IV of Chapter 7 of Title 42 of the United States Code and this article, shall be confidential, and shall not be open to examination or released for disclosure for any purpose not directly connected with the administration of the child and spousal support enforcement program. No public entity shall disclose any file, application, paper, document, or record, or the information contained therein, except as expressly authorized by this section.

(2) In no case shall information be released or the whereabouts of one party or the child disclosed to another party, or to the attorney of any other party, if a protective order has been issued by a court or administrative agency with respect to the former party, a good cause claim under Section 11477.04 has been approved or is pending, or the public agency responsible for establishing paternity or enforcing support has reason to believe that the release of the information may result in physical or emotional harm to the former party or the child.

(3) Notwithstanding any other provision of law, a proof of service filed by the district attorney shall not disclose the address where service of process was accomplished. Instead, the district attorney shall keep the address in his or her own records. The proof of service shall specify that the address is on record at the district attorney's office and that the address may be released only upon an order from the court pursuant to paragraph (6) of subdivision (c).

(c) Disclosure of the information described in subdivision (b) is authorized as follows:

(1) All files, applications, papers, documents and records as described in subdivision (b) shall be available and may be used by a public entity for all administrative, civil, or criminal investigations, actions, proceedings, or prosecutions conducted in connection with the administration of the child and spousal support enforcement program approved under Part D (commencing with Section 651) of Subchapter IV of Chapter 7 of Title 42 of the United States Code, and any other plan or program described in Section 303.21 of Title 45 of the Code of Federal Regulations and to the county welfare department responsible for administering a program operated under a state plan pursuant to Subpart 1 or 2 of Part B or Part E of Subchapter IV of Chapter 7 of Title 42 of the United States Code.

(2) A document requested by a person who wrote, prepared, or furnished the document may be examined by or disclosed to that person or his or her designee.

(3) The payment history of an obligor pursuant to a support order may be examined by or released to the court, the obligor, or the person on whose behalf enforcement actions are being taken or that person's designee.

(4) Income and expense information of either parent may be released to the other parent for the purpose of establishing or modifying a support order.

(5) Public records subject to disclosure under the Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of the Government Code) may be released.

(6) After a noticed motion and a finding by the court, in a case in which establishment or enforcement actions are being taken, that release or disclosure to the obligor or obligee is required by due process of law, the court may order a public entity that possesses an application, paper, document, or record as described in subdivision (b) to make that item available to the obligor or obligee for examination or copying, or to disclose to the obligor or obligee the contents of that item. Article 9 (commencing with Section 1040) of Chapter 4 of Division 3 of the Evidence Code shall not be applicable to proceedings under this part. At any hearing of a motion filed pursuant to this section, the court shall inquire of the district attorney and the parties appearing at the hearing if there is reason to believe that release of the requested information may result in physical or emotional harm to a party. If the court determines that harm may occur, the court shall issue any protective orders or injunctive orders restricting the use and disclosure of the information as are necessary to protect the individuals.

(7) To the extent not prohibited by federal law or regulation, information indicating the existence or imminent threat of a crime against a child, or location of a concealed, detained, or abducted child or the location of the concealing, detaining, or abducting person, may be disclosed to any district attorney, any appropriate law enforcement agency, or to any state or county child protective agency, or may be used in any judicial proceedings to prosecute that crime or to protect the child.

(8) The social security number, most recent address, and the place of employment of the absent parent may be released to an authorized person as defined in Section 653(c) of Title 42 of the United States Code, only if the authorized person has filed a request for the information, and only if the information has been provided to the California Parent Locator Service by the federal Parent Locator Service pursuant to Section 653 of Title 42 of the United States Code.

(d) (1) "Administration and implementation of the child and spousal support enforcement program," as used in this section, means the carrying out of the state and local plans for establishing, modifying, and enforcing child support obligations, enforcing spousal support orders, and determining paternity pursuant to Part D (commencing with Section 651) of Subchapter IV of Chapter 7 of Title 42 of the United States Code and this article.

(2) For purposes of this section, "obligor" means any person owing a duty of support.

(3) As used in this chapter, "putative parent" shall refer to any person reasonably believed to be the parent of a child for whom the district attorney is attempting to establish paternity or establish, modify, or enforce support pursuant to Section 11475.1.

(e) Any person who willfully, knowingly, and intentionally violates this section is guilty of a misdemeanor.

(f) Nothing in this section shall be construed to compel the disclosure of information relating to a deserting parent who is a recipient of aid under a public assistance program for which federal aid is paid to this state, if that information is required to be kept confidential by the federal law or regulations relating to the program.

SEC. 11. Section 11478.2 of the Welfare and Institutions Code is amended to read:

11478.2. (a) In all actions involving paternity or support, including, but not limited to, proceedings under the Family Code, and under this division, the district attorney and Attorney General represent the public interest in establishing, modifying, and enforcing support obligations. No attorney-client relationship shall be deemed to have been created between the district attorney or Attorney General and any person by virtue of the action of the district attorney or the Attorney General in carrying out these statutory duties.

(b) The provisions of subdivision (a) are declarative of existing law.

(c) In all requests for services of the district attorney or Attorney General pursuant to Section 11475.1 relating to actions involving paternity or support, not later than the same day an individual makes a request for these services in person, and not later than five working days after either (1) a case is referred for services from the county welfare department, (2) receipt of a request by mail for an application for services, or (3) an individual makes a request for services by telephone, the district attorney or Attorney General shall give notice to the individual requesting services or on whose behalf services have been requested that the district attorney or Attorney General does not represent the individual or the children who are the subject of the case, that no attorney-client relationship exists between the district attorney or Attorney General and those persons, and that no such representation or relationship shall arise if the district attorney or Attorney General provides the services requested. Notice shall be in bold print and in plain English and shall be translated into the language understandable by the recipient when reasonable. The notice shall include the advice that the absence of an attorney-client relationship means that communications from the recipient are not privileged and that the district attorney or Attorney General may provide support enforcement services to the other parent in the future.

(d) The district attorney or Attorney General shall give the notice required pursuant to subdivision (c) to all recipients of services under Section 11475.1 who have not otherwise been provided that notice, not later than the date of the next annual notice required under Section 11476.2. This notice shall include notification to the recipient of services under Section 11475.1 that the recipient may

inspect the clerk's file at the county clerk's office, and that, upon request, the district attorney, or, if appropriate, the Attorney General, will furnish a copy of the most recent order entered in the case.

(e) The district attorney, or, if appropriate, the Attorney General, shall serve a copy of the complaint for paternity or support, or both on recipients of support services under Section 11475.1, as specified in paragraph (2) of subdivision (e) of Section 11350.1. A notice shall accompany the complaint which informs the recipient that the district attorney or Attorney General may enter into a stipulated order resolving the complaint, and that if the recipient wishes to assist the prosecuting attorney, he or she should send all information on the noncustodial parent's earnings and assets to the prosecuting attorney.

(f) (1) The district attorney or Attorney General shall provide written notice to recipients of services under Section 11475.1 of the initial date and time, and purpose of every hearing in a civil action for paternity or support. The notice shall include the following language:

IMPORTANT NOTICE

It may be important that you attend the hearing. The district attorney does not represent you or your children. You may have information about the noncustodial parent, such as information about his or her income or assets, or your need for support that will not be presented to the court unless you attend the hearing. You have the right to be heard in court and tell the court what you think the court should do with the child support order.

If you have a court order for support that arose as part of your divorce, this hearing could change your rights or your children's rights to support. You have the right to attend the hearing and, the right, to be heard.

If you would like to attend the hearing and be told about any changes to the hearing date or time, notify this office by _____. The district attorney or Attorney General will then have to tell you about any changes to the hearing date or time.

(2) The notice shall state the purpose of the hearing or be attached to the motion or other pleading which caused the hearing to be scheduled.

(3) The notice shall be provided separate from all other material and shall be in at least 14-point type. The failure of the district attorney or Attorney General to comply with this subdivision shall not affect the validity of any order.

(4) The notice shall be provided not later than seven calendar days prior to the hearing, or, if the district attorney or Attorney General receives notice of the hearing less than seven days prior to the hearing, within two days of the receipt by the district attorney or Attorney General of the notice of the hearing.

(5) The district attorney or Attorney General shall, in order to implement this subdivision, make reasonable efforts to ensure that the district attorney or Attorney General has current addresses for recipients of support enforcement services.

(g) The district attorney or Attorney General shall give notice to recipients of services under Section 11475.1 of every order obtained by the district attorney or Attorney General that establishes or modifies the support obligation for the recipient or the children who are the subject of the order, by sending a copy of the order to the recipient. The notice shall be made within the time specified by federal law 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 shall not affect the validity of any order.

(h) The district attorney or Attorney General shall give notice to the noncustodial parent against whom a civil action is filed that the district attorney or Attorney General is not the attorney representing any individual, including, but not limited to, the custodial parent, the child, or the noncustodial parent.

(i) Nothing in this section shall be construed to preclude any person who is receiving services under Section 11475.1 from filing and prosecuting an independent action to establish, modify, and enforce an order for current support on behalf of himself or herself or a child if that person is not receiving public assistance.

(j) A person who is receiving services under Section 11475.1 but who is not currently receiving public assistance on his or her own behalf or on behalf of a child shall be asked to execute, or consent to, any stipulation establishing or modifying a support order in any action in which that person is named as a party, before the stipulation is filed. The district attorney or Attorney General shall not submit to the court for approval a stipulation to establish or modify a support order in such an action without first obtaining the signatures of all parties to the action, their attorneys of record, or persons authorized to act on their behalf.

(k) The district attorney or Attorney General shall not enter into a stipulation which reduces the amount of past due support, including interest and penalties accrued pursuant to an order of current support, on behalf of a person who is receiving support enforcement services under Section 11475.1 and who is owed support arrearages that exceed unreimbursed public assistance paid to the recipient of the support enforcement services, without first obtaining the consent of the person who is receiving services under Section 11475.1 on his or her own behalf or on behalf of the child.

(*l*) The notices required in this section shall be provided in the following manner:

(1) In all cases in which the person receiving services under Section 11475.1 resides in California, notice shall be provided by mailing the item by first-class mail to the last known address of, or personally delivering the item to, that person.

(2) In all actions enforced under Chapter 6 (commencing with Section 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. 11.5. Section 11478.2 of the Welfare and Institutions Code is amended to read:

11478.2. (a) In all actions involving paternity or support, including, but not limited to, proceedings under the Family Code, and under this division, the district attorney and Attorney General represent the public interest in establishing, modifying, and enforcing support obligations. No attorney-client relationship shall be deemed to have been created between the district attorney or Attorney General and any person by virtue of the action of the district attorney or the Attorney General in carrying out these statutory duties.

(b) The provisions of subdivision (a) are declarative of existing law.

(c) (1) In all requests for services of the district attorney or Attorney General pursuant to Section 11475.1 relating to actions involving paternity or support, the district attorney or Attorney General shall provide notice as prescribed in paragraph (2), not later than the same day an individual makes a request for these services in person, and not later than five working days after any one of the following events:

(A) A case is referred for services from the county welfare department.

(B) Receipt of a request by mail for an application for services.

(C) An individual makes a request for services by telephone.

(2) 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 shall arise if the district attorney or Attorney General provides the services requested. Notice shall be in bold print and in plain English and shall be translated into the language understandable by the recipient when reasonable. The notice shall include the advice that the absence of an attorney-client relationship means that communications from the recipient are not privileged and that the district attorney or Attorney General may provide support enforcement services to the other parent in the future.

(d) The district attorney or Attorney General shall give the notice required pursuant to subdivision (c) to all recipients of services under Section 11475.1 who have not otherwise been provided that notice, not later than the date of the next annual notice required under Section 11476.2. This notice shall include notification to the recipient of services under Section 11475.1 that the recipient may inspect the clerk's file at the county clerk's office, and that, upon request, the district attorney, or, if appropriate, the Attorney General, will furnish a copy of the most recent order entered in the case.

(e) The district attorney, or, if appropriate, the Attorney General, shall serve a copy of the complaint for paternity or support, or both on recipients of support services under Section 11475.1, as specified in paragraph (2) of subdivision (e) of Section 11350.1. A notice shall accompany the complaint which informs the recipient that the district attorney or Attorney General may enter into a stipulated order resolving the complaint, and that if the recipient wishes to assist the prosecuting attorney, he or she should send all information on the noncustodial parent's earnings and assets to the prosecuting attorney.

(f) (1) The district attorney or Attorney General shall provide written notice to recipients of services under Section 11475.1 of the initial date and time, and purpose of every hearing in a civil action for paternity or support. The notice shall include the following language:

IMPORTANT NOTICE

It may be important that you attend the hearing. The district attorney does not represent you or your children. You may have information about the noncustodial parent, such as information about his or her income or assets, or your need for support that will not be presented to the court unless you attend the hearing. You have the right to be heard in court and tell the court what you think

the court should do with the child support order.

If you have a court order for support that arose as part of your divorce, this hearing could change your rights or your children's rights to support. You have the right to attend the hearing and, the right, to be heard.

If you would like to attend the hearing and be told about any changes to the hearing date or time, notify this office by _____. The district attorney or Attorney General will then have to tell you about any changes to the hearing date or time.

(2) The notice shall state the purpose of the hearing or be attached to the motion or other pleading which caused the hearing to be scheduled.

(3) The notice shall be provided separate from all other material and shall be in at least 14-point type. The failure of the district attorney or Attorney General to comply with this subdivision shall not affect the validity of any order.

(4) The notice shall be provided not later than seven calendar days prior to the hearing, or, if the district attorney or Attorney General receives notice of the hearing less than seven days prior to the hearing, within two days of the receipt by the district attorney or Attorney General of the notice of the hearing.

(5) The district attorney or Attorney General shall, in order to implement this subdivision, make reasonable efforts to ensure that the district attorney or Attorney General has current addresses for recipients of support enforcement services.

(g) The district attorney or Attorney General shall give notice to recipients of services under Section 11475.1 of every order obtained by the district attorney or Attorney General that establishes or modifies the support obligation for the recipient or the children who are the subject of the order, by sending a copy of the order to the recipient. The notice shall be made within the time specified by federal law 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 shall not affect the validity of any order.

(h) The district attorney or Attorney General shall give notice to the noncustodial parent against whom a civil action is filed that the district attorney or Attorney General is not the attorney representing any individual, including, but not limited to, the custodial parent, the child, or the noncustodial parent.

(i) Nothing in this section shall be construed to preclude any person who is receiving services under Section 11475.1 from filing and prosecuting an independent action to establish, modify, and enforce an order for current support on behalf of himself or herself or a child if that person is not receiving public assistance.

(j) A person who is receiving services under Section 11475.1 but who is not currently receiving public assistance on his or her own behalf or on behalf of a child shall be asked to execute, or consent to, any stipulation establishing or modifying a support order in any action in which that person is named as a party, before the stipulation is filed. The district attorney or Attorney General shall not submit to the court for approval a stipulation to establish or modify a support order in that 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.

(n) Any notice required by subdivisions (c) and (h) of this section shall include notice of, and information about, the child support services hearings available pursuant to Section 10950, provided that there is federal financial participation available as set forth in subdivision (e) of Section 10950.

SEC. 12. Section 16576 of the Welfare and Institutions Code is amended to read:

16576. (a) The department shall develop an implementation plan for the Statewide Child Support Registry. The Statewide Child Support Registry shall be operated by the agency responsible for operation of the Statewide Automated Child Support System (SACSS) or its replacement. The Statewide Child Support Registry shall include storage and data retrieval of the data elements specified in Section 16577 for all California child support orders. The plan shall be developed in consultation with clerks of the court, district attorneys, and child support advocates. The plan shall be submitted to the Legislature by January 31, 1998. The implementation plan shall explain in general terms, among other things, how the Statewide Child Support Registry will operate to ensure that all data in the Statewide Child Support Registry can be accessed and how data shall be integrated for statistical analysis and reporting purposes with all child support order data contained in the Statewide Automated Child Support System or its replacement and the Los Angeles Automated Child Support Enforcement System (ACSES) Replacement System.

(b) Commencing no later than October 1, 1998, each clerk of the court shall provide the information specified in Section 16577 within 20 days to the department or the Statewide Child Support Registry from each new or modified child support order, including child support arrearage orders.

(c) Commencing no later than October 1, 1998, the department shall maintain a system for compiling the child support data received from the clerks of the court, ensure that all child support data received from the clerks of the court are entered into the Statewide Child Support Registry within 10 days of receipt in the Statewide Child Support Registry, and ensure that the Statewide Child Support Registry is fully implemented statewide.

(d) Commencing no later than October 1, 1998, the department shall provide aggregate data on a periodic basis on the data maintained by the Statewide Child Support Registry to the Judicial Council, the appropriate agencies of the executive branch, and the Legislature for statistical analysis and review. The data shall not include individual identifying information for specific cases.

(e) Commencing no later than October 1, 1998, any information maintained by the Statewide Child Support Registry received from clerks of the courts shall be provided to county district attorneys, the Franchise Tax Board, the courts, and others as provided by law.

(f) On or before October 1, 1998, the department shall submit a report to the appropriate policy and fiscal committees of the Legislature on the requirements of this chapter.

SEC. 13. Section 16576.5 of the Welfare and Institutions Code is repealed.

SEC. 14. Section 16577 of the Welfare and Institutions Code is repealed.

SEC. 15. Section 16577 is added to the Welfare and Institutions Code, to read:

16577. (a) The Judicial Council shall develop any forms that may be necessary to implement the Statewide Child Support Registry. The forms may be in electronic form or in hard copy, as appropriate. The forms shall be developed so as not to delay implementation, and shall be available no later than 30 days prior to the implementation, of the Statewide Child Support Registry.

(b) The information transmitted from the clerks of the court to the Statewide Child Support Registry shall include all of the following:

(1) Any information required under federal law.

(2) Any other information the department and the Judicial Council find appropriate.

SEC. 16. 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. 17. Section 10.5 of this bill incorporates amendments to Section 11478.1 of the Welfare and Institutions Code proposed by both this bill and AB 2773. 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 11478.1 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 2773, in which case Section 10 of this bill shall not become operative.

SEC. 18. Section 11.5 of this bill incorporates amendments to Section 11478.2 of the Welfare and Institutions Code proposed by both this bill and AB 1961. 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 11478.2 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 1961, in which case Section 10 of this bill shall not become operative.

CHAPTER 859

An act to amend Sections 4711 and 4712 of, and to add Section 4714 to, the Welfare and Institutions Code, relating to developmental 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 4711 of the Welfare and Institutions Code, as amended by Section 58 of Chapter 310 of the Statutes of 1998, is amended to read:

4711. Upon receipt of the hearing request form, where a fair hearing has been requested but mediation has not, the responsible state agency director shall immediately notify the claimant, the claimant's legal guardian or conservator, the parent of a minor claimant, the claimant's authorized representative, and the service agency director in writing of all the following information applicable to fair hearings. Where the hearing request form contains a request for a fair hearing and mediation, the notifications shall be made separately, and each notice shall contain only the information applicable to the particular type of proceeding.

(a) The time, place, and date of the fair hearing or mediation, as applicable, if agreed to by the service agency.

(b) The rights of the parties at the fair hearing pursuant to Section 4710.6 or mediation, as applicable, pursuant to Section 4711.5.

(c) The availability of advocacy assistance pursuant to paragraph (1) of subdivision (b) of Section 4710.6 for both mediation and fair hearings.

(d) The name, address, and telephone number of the persons or offices designated by the director of the responsible state agency, as applicable, to conduct fair hearings, mediate disputes, and to receive requests for continuance or consolidation.

(e) The rights and responsibilities of the parties established pursuant to subdivisions (d) to (m), inclusive, of Section 4712.

SEC. 2. Section 4712 of the Welfare and Institutions Code, as amended by Section 61 of Chapter 310 of the Statutes of 1998, is amended to read:

4712. (a) The fair hearing shall be held within 50 days of the date the hearing request form is postmarked or received by the service agency, whichever is earlier, unless a continuance based upon a showing of good cause has been granted to the claimant. The service agency may also request a continuance based upon a showing of good cause, provided that the granting of the continuance does not extend the time period for rendering a final administrative decision beyond the 90-day period provided for in this chapter. For purposes of this section, good cause includes, but is not limited to, the following circumstances:

(1) Death of a spouse, parent, child, brother, sister, grandparent of the claimant or authorized representative, or legal guardian or conservator of the claimant.

(2) Personal illness or injury of the claimant or authorized representative.

(3) Sudden and unexpected emergencies, including, but not limited to, court appearances of the claimant or authorized representative, conflicting schedules of the authorized representative if the conflict is beyond the control of the authorized representative.

(4) Unavailability of a witness or evidence, the absence of which would result in serious prejudice to the claimant.

(5) An intervening request by the claimant or his or her authorized representative for mediation.

(b) Notwithstanding Sections 19130, 19131, and 19132 of the Government Code, the department shall contract for the provision of independent hearing officers. Hearing officers shall have had at least two years of full-time legal training at a California or American Bar Association accredited law school or the equivalent in training and experience as established by regulations to be promulgated by the department pursuant to Section 4705. These hearing officers shall receive training in the law and regulations governing services to developmentally disabled individuals and administrative hearings. The State Department of Developmental Services shall seek the advice of the State Council on Developmental Disabilities in the development of training materials and the implementation of training procedures by the department.

(c) The hearing officer shall not be an employee, agent, board member, or contractor of the service agency against whose action the appeal has been filed, or a spouse, parent, child, brother, sister, grandparent, legal guardian, or conservator of the claimant, or any person who has a direct financial interest in the outcome of the fair hearing, or any other interest which would preclude a fair and impartial hearing.

(d) The claimant and the service agency shall exchange a list of potential witnesses, the general subject of the testimony of each witness, and copies of all potential documentary evidence at least five days prior to the hearing. The hearing officer may prohibit testimony of a witness that is not disclosed and may prohibit the introduction of documents that have not been disclosed. However, the hearing officer may allow introduction of such testimony or witness in the interest of justice.

(e) The fair hearing shall be held at a time and place reasonably convenient to the claimant and the authorized representative.

(f) Merits of a pending fair hearing shall not be discussed between the hearing officer and a party outside the presence of the other party.

(g) The hearing officer shall voluntarily disqualify himself or herself and withdraw from any case in which he or she cannot accord a fair and impartial hearing or consideration. Any party may request the disqualification of the hearing officer by filing an affidavit, prior

to the taking of evidence at a hearing, stating with particularity the grounds upon which it is claimed that a fair and impartial hearing cannot be accorded. The issue shall be decided by the hearing officer.

(h) Both parties to the fair hearing shall have the rights specified in subdivision (a) of Section 4710.6.

(i) The fair hearing need not be conducted according to the technical rules of evidence and those related to witnesses. Any relevant evidence shall be admitted. Both parties shall be allowed to submit documents into evidence at the beginning of the hearing. No party shall be required to formally authenticate any document unless the hearing officer determines the necessity to do so in the interest of justice. All testimony shall be under oath or affirmation which the hearing officer is empowered to administer.

(j) A service agency shall present its witnesses and all other evidence before the claimant presents his or her case unless the parties agree otherwise or the hearing officer determines that there exists good cause for a witness to be heard out of order. This section does not alter the burden of proof.

(k) A recording shall be made of the proceedings before the hearing officer. Any cost of recording shall be borne by the responsible state agency.

(*l*) The fair hearing shall be conducted in the English language. However, if the claimant, the claimant's guardian or conservator, parent of a minor claimant, or authorized representative does not understand English, an interpreter shall be provided by the responsible state agency.

(m) The fair hearing shall be open to the public except at the request of the claimant or authorized representative or when personnel matters are being reviewed.

SEC. 3. Section 4712 of the Welfare and Institutions Code, as amended by Section 61 of Chapter 310 of the Statutes of 1998, is amended to read:

4712. (a) The fair hearing shall be held within 50 days of the date the hearing request form is postmarked or received by the service agency, whichever is earlier, unless a continuance based upon a showing of good cause has been granted to the claimant. The service agency may also request a continuance based upon a showing of good cause, provided that the granting of the continuance does not extend the time period for rendering a final administrative decision beyond the 90-day period provided for in this chapter. For purposes of this section, good cause includes, but is not limited to, the following circumstances:

(1) Death of a spouse, parent, child, brother, sister, grandparent of the claimant or authorized representative, or legal guardian or conservator of the claimant.

(2) Personal illness or injury of the claimant or authorized representative.

(3) Sudden and unexpected emergencies, including, but not limited to, court appearances of the claimant or authorized representative, conflicting schedules of the authorized representative if the conflict is beyond the control of the authorized representative.

(4) Unavailability of a witness or evidence, the absence of which would result in serious prejudice to the claimant.

(5) An intervening request by the claimant or his or her authorized representative for mediation.

(b) Notwithstanding Sections 19130, 19131, and 19132 of the Government Code, the department shall contract for the provision of independent hearing officers. Hearing officers shall have had at least two years of full-time legal training at a California or American Bar Association accredited law school or the equivalent in training and experience as established by regulations to be adopted by the department pursuant to Section 4705. These hearing officers shall receive training in the law and regulations governing services to developmentally disabled individuals and administrative hearings. Training shall include, but not be limited to, the Lanterman Developmental Disabilities Services Act and regulations adopted thereunder, relevant case law, information about services and supports available to persons with developmental disabilities, including innovative services and supports, the standard agreement contract between the department and regional centers and regional center purchase-of-service policies, and information and training on protecting the rights of consumers at administrative hearings, with emphasis on assisting, where appropriate, those consumers represented by themselves or an advocate inexperienced in administrative hearings in fully developing the administrative record. The State Department of Developmental Services shall seek the advice of the State Council on Developmental Disabilities, the Organization of Area Boards, the protection and advocacy agency designated by the Governor in this state to fulfill the requirements and assurances of the federal Developmental Disabilities Assistance and Bill of Rights Act, contained in Chapter 75 (commencing with Section 6000) of Title 42 of the United States Code, the Association of Regional Center Agencies, and other state agencies or organizations and consumers and family members as designated by the department in the development of standardized hearing procedures for hearing officers and training materials and the implementation of training procedures by the department. The department shall provide formal training for hearing officers on at least an annual basis. The training shall be developed and presented by the department, however, the department shall invite those agencies and organizations listed in this subdivision to participate.

(c) The hearing officer shall not be an employee, agent, board member, or contractor of the service agency against whose action the appeal has been filed, or a spouse, parent, child, brother, sister,

grandparent, legal guardian, or conservator of the claimant, or any person who has a direct financial interest in the outcome of the fair hearing, or any other interest which would preclude a fair and impartial hearing.

(d) The claimant and the service agency shall exchange a list of potential witnesses, the general subject of the testimony of each witness, and copies of all potential documentary evidence at least five days prior to the hearing. The hearing officer may prohibit testimony of a witness that is not disclosed and may prohibit the introduction of documents that have not been disclosed. However, the hearing officer may allow introduction of such testimony or witness in the interest of justice.

(e) The fair hearing shall be held at a time and place reasonably convenient to the claimant and the authorized representative. The claimant or the authorized representative of the claimant and the regional center shall agree on the location of the fair hearing.

(f) Merits of a pending fair hearing shall not be discussed between the hearing officer and a party outside the presence of the other party.

(g) The hearing officer shall voluntarily disqualify himself or herself and withdraw from any case in which he or she cannot accord a fair and impartial hearing or consideration. Any party may request the disqualification of the hearing officer by filing an affidavit, prior to the taking of evidence at a hearing, stating with particularity the grounds upon which it is claimed that a fair and impartial hearing cannot be accorded. The issue shall be decided by the hearing officer.

(h) Both parties to the fair hearing shall have the rights specified in subdivision (a) of Section 4710.6.

(i) The fair hearing need not be conducted according to the technical rules of evidence and those related to witnesses. Any relevant evidence shall be admitted. Both parties shall be allowed to submit documents into evidence at the beginning of the hearing. No party shall be required to formally authenticate any document unless the hearing officer determines the necessity to do so in the interest of justice. All testimony shall be under oath or affirmation which the hearing officer is empowered to administer.

(j) A service agency shall present its witnesses and all other evidence before the claimant presents his or her case unless the parties agree otherwise or the hearing officer determines that there exists good cause for a witness to be heard out of order. This section does not alter the burden of proof.

(k) A recording shall be made of the proceedings before the hearing officer. Any cost of recording shall be borne by the responsible state agency.

(*l*) The fair hearing shall be conducted in the English language. However, if the claimant, the claimant's guardian or conservator, parent of a minor claimant, or authorized representative does not

understand English, an interpreter shall be provided by the responsible state agency.

(m) The fair hearing shall be open to the public except at the request of the claimant or authorized representative or when personnel matters are being reviewed.

(n) The agency awarded the contract for independent hearing officers shall annually conduct, or cause to be conducted, an evaluation of the hearing officers who conduct hearings under this part. The department shall approve the methodology used to conduct the annual evaluation. The agency awarded the contract shall annually submit to the department copies of administrative decisions reviewed by the superior court and a summary analysis of the rationale as to why the superior court affirmed or denied the decisions. Information and data for this evaluation shall be solicited from consumers who were claimants in an administrative hearing over the past year, their family members or authorized representative if involved in the hearing, regional centers, and nonattorney advocates, attorneys who represented either party in an administrative hearing over the past year, and the organizations identified in subdivision (b). The areas of evaluation shall include, but not be limited to, the hearing officers' demeanor toward parties and witnesses, conduct of the hearing in accord with fairness and standards of due process, ability to fairly develop the record in cases where consumers represent themselves or are represented by an advocate that does not have significant experience in administrative hearings, use of legal authority, clarity of written decisions, and adherence to the requirements of subdivision (b) of Section 4712.5. The department shall be provided with a copy of the evaluation and shall use the evaluation in partial fulfillment of its evaluation of the contract for the provision of independent hearing officers. A summary of the data collected and the summary analysis of superior court decisions shall be made available to the public upon request, provided that the names of individual hearing officers and consumers shall not be disclosed.

SEC. 4. Section 4714 is added to the Welfare and Institutions Code, to read:

4714. (a) Commencing July 1, 1999, for each appeal request submitted pursuant to Section 4710.5, regional centers and developmental centers shall submit information to the department including, but not limited to, all of the following:

(1) Whether the case was resolved through an informal meeting or mediation.

(2) Whether an informal meeting or mediation was declined, and if so, by which party.

(3) The issue or issues involved in the case.

(4) The outcome of the case if a fair hearing was held.

(b) The information collected pursuant to this section shall be compiled by the department and made available to the public upon request.

SEC. 5. Section 3 of this bill incorporates amendments to Section 4712 of the Welfare and Institutions Code proposed by both this bill and SB 1038. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1999, (2) each bill amends Section 4712 of the Welfare and Institutions Code, and (3) this bill is enacted after SB 1038, in which case Section 2 of this bill shall not become operative.

CHAPTER 860

An act to add Title 17 (commencing with Section 3269) to Part 4 of Division 3 of the Civil Code, relating to liability, 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 all of the following:

(a) The "Year 2000 Problem," characterized by the failure of computers to function because they are programmed to recognize the year using the last two digits and may be unable to recognize dates after December 31, 1999, threatens potential catastrophe and poses a substantial risk to the welfare of the citizens, businesses, and government of California.

(b) Massive efforts are underway in both the public and private sectors to prepare all "mission critical" computer systems to recognize the year 2000, thereby protecting against computer failures that could jeopardize our public safety, our economic health, our ready access to electricity and water, our medical care, and numerous other essential goods and services.

(c) The free flow of information about solutions to the Year 2000 Problem among public and private entities and individuals is essential to our collective efforts to achieve Year 2000 Problem compliance and minimize the risks associated with Year 2000 Problem failures.

(d) Businesses and individuals are reluctant to share information relating to the Year 2000 Problem due to concerns that the information, although shared in good faith, may be used or applied incorrectly or include unintended inaccuracies that may lead to costly legal complications.

(e) The federal Department of Justice Antitrust Division has informed publicly traded corporations that sharing data with one another regarding the Year 2000 Problem should not be considered an antitrust issue.

(f) The federal Securities and Exchange Commission is requiring broker-dealers to submit information on where they are in the Year 2000 Problem compliance process in two reports on August 31, 1998, and April 30, 1999.

SEC. 2. It is the intent of the Legislature to ensure a free flow of information about Year 2000 Problem remediation efforts by creating a safe harbor for individuals and public and private entities that share, in good faith, information about their preparations for Year 2000 Problem compliance.

SEC. 3. Title 17 (commencing with Section 3269) is added to Part 4 of Division 3 of the Civil Code, to read:

TITLE 17. YEAR 2000 INFORMATION DISCLOSURES

3269. For purposes of this title, the following definitions shall apply:

(a) "Year 2000 Problem" means any expected or actual computing, physical, enterprise, or distribution system complications that may occur in any computer system, computer program, software application, embedded systems, embedded chip calculations, or other computing application as a result of the year change from 1999 to 2000. These complications are often associated with the common programming practice of using a two-digit field to represent a year, resulting in erroneous date calculations, an ambiguous interpretation of the term "00," the failure to recognize the year 2000 as a leap year, the use of algorithms that use the year "99" or "00" as a flag for another function, or the use of applications, software, or hardware that are date sensitive.

(b) "Information" means any assessment, projection, estimate, planning document, objective, timetable, test plan, test date, or test result related to the implementation or verification of Year 2000 Problem processing capabilities of a computer system, computer program, software application, embedded systems, embedded chip calculations, or other computing application and intended to solve a year 2000 Problem.

(c) "Disclosure" and "discloses" means any dissemination or provision of information without any expectation or right to remuneration or fee therefor.

(d) "Person" means any individual, corporation, partnership, business entity, joint venture, association, the State of California or any of its subdivisions, or any other organization or any combination thereof.

3270. (a) Notwithstanding any other law, any person that discloses information regarding the Year 2000 Problem or any

potential solutions to the problem, including, but not limited to, those persons described in subdivision (b), shall not be liable for damages in any tort action brought against that person regarding the Year 2000 Problem for any injury caused by, arising out of, or relating to, the use of the information disclosed, except as provided in Section 3271.

(b) This section shall apply to any person that, when making the disclosures described in subdivision (a), specifically disclaims the universal applicability of the potential solutions disclosed, and expresses a unique experience with any Year 2000 information.

(c) This section does not apply to prospective solutions sold or exchanged for profit or provided for profit by a person or entity holding itself out as a provider of Year 2000 solutions.

3271. (a) Section 3270 shall not apply if the claimant in an action described in that section establishes that the Year 2000 Problem information disclosure was all of the following:

(1) Material.

(2) False, inaccurate, or misleading.

(3) Either (A) made with the knowledge that the statement was false, inaccurate, or misleading, (B) if the information disclosed was a republication of or otherwise a repetition of information from another person, made without a disclosure that the information was based on information supplied by another person or made with the knowledge that the statement was false, inaccurate, or misleading, or (C) made with gross negligence in the determination of the truth or accuracy of the disclosure or in the determination of whether the disclosure was misleading.

(b) Nothing in this title shall be deemed to affect any other remedy available at law, including, but not limited to, temporary or permanent injunctive relief, against a public or private entity or individual with respect to Year 2000 Problem information disclosures.

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 significantly reduce the risks posed to the livelihood of Californians, the ability of industry to conduct business in the state, and the state to mitigate possible systems failures due to the Year 2000 Problem, as defined in this act, that would damage the state's ability to do business with and provide for its citizens, it is necessary that this act take effect immediately.

CHAPTER 861

An act to add Title 7.75 (commencing with Section 67470) to the Government Code, and to add Chapter 4.6 (commencing with

Section 33498) to Part 1 of Division 24 of the Health and Safety Code, relating to state government, and making an appropriation therefor.

[Approved by Governor September 25, 1998. Filed with Secretary of State September 28, 1998.]

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

SECTION 1. Title 7.75 (commencing with Section 67470) is added to the Government Code, to read:

TITLE 7.75. CALIFORNIA STATE UNIVERSITY, CHANNEL ISLANDS SITE AUTHORITY ACT

67470. This title shall be known and may be cited as the California State University, Channel Islands Site Authority Act.

67471. (a) The Legislature finds and declares that the health, safety, and welfare of the people of California depend upon the development and support of the conversion of the former Camarillo State Hospital into a campus of the California State University as authorized by Section 89009 of the Education Code, as well as other compatible uses. The continued economic vitality of the region can be enhanced by productive development of those portions of the former Camarillo State Hospital site not needed immediately for the California State University use in a manner consistent with the educational mission and the development of a California State University campus.

(b) The Legislature further finds and declares that the County of Ventura has an interest in promoting the economic vitality of the region and is committed to the successful and productive development of a California State University campus and compatible uses, and toward that end, will cooperate in providing for the development of a California State University campus at the site.

(c) The Legislature further finds and declares that is in the interest of the state and its people for the state to do all of the following:

(1) Establish a special authority composed of representatives of the California State University and local government for the purpose of facilitating the optimal use of the former hospital site by the California State University and other compatible uses, and mitigating the onsite and offsite impacts of those uses.

(2) Provide the special authority with the power to promote use of the site through tax incentives so as to result in preservation of the site, needed income for the development of the university, and necessary economic, cultural, and social benefits to the region.

(3) Provide financing authority to achieve the development and other beneficial educational uses of the campus and its environs.

(d) The Legislature further finds and declares that the policy set forth in this title is most likely to be achieved if an effective governmental structure exists to plan for, finance, mitigate the impacts of, and carry out the reuse of the Camarillo State Hospital in a cooperative, coordinated, balanced, and decisive manner in which the site is used for a California State University campus and related uses, as well as for commercial and other uses that will provide revenue to support the state university's development and provide a beneficial use to what would otherwise be abandoned and deteriorating facilities and a blighted area.

67472. For the purposes of this title, the following definitions shall apply:

(a) "Authority" means the California State University, Channel Islands Site Authority.

(b) "County" means the County of Ventura.

(c) "Participating institution" means an entity recognized as a participating institution by resolution of the authority, and includes, but is not limited to, the county and the trustees.

(d) "Site" means that property which formerly constituted the grounds of the Camarillo State Hospital and which has been authorized for transfer to the Trustees of the California State University by Section 89009 of the Education Code.

(e) "Trustees" means the Trustees of the California State University, or their delegated officers.

67473. (a) The California State University, Channel Islands Site Authority is hereby established.

(b) The purpose of the authority shall be to provide a specific reuse plan for and to finance and support the transition of the property known as Camarillo State Hospital from its former use to a new state university campus and compatible uses.

67474. (a) The authority shall be governed by a board of seven members composed of the following:

(1) Four representatives of the Trustees of the California State University, as may be designated by the Chancellor of the California State University. The chancellor may designate two additional representatives to serve as alternate members of the authority.

(2) Three representatives from the County of Ventura as follows:

(A) Two representing the County of Ventura appointed by the Ventura County Board of Supervisors from its own membership. The board of supervisors shall appoint a third supervisor who shall serve as an alternate member of the authority.

(B) One representing the cities of Ventura County, who shall be a city officer appointed by the city selection committee. The city selection committee shall appoint a second city officer who shall serve as an alternate member of the authority.

(3) An alternate member may serve and vote in place of the regular member of the authority who is absent or who disqualifies herself or himself from participating in any matter at a meeting of the

authority. If the office of a regular trustee member, regular county member, or regular city member becomes vacant, the respective alternate trustee member, county member, or city member may serve and vote until the appointment and qualification of a regular trustee member, county member, or city member to fill the vacancy.

(b) Upon the first appointment of its members, and thereafter on or after July 1 of each year, or other date each year as the authority may specify from time to time, the authority shall elect from its members a chairperson and a vice chairperson, who shall hold office until the following July 1, or other date each year as the authority may specify from time to time, and shall continue to serve until their successors have been elected. If the chairperson is a member designated pursuant to paragraph (1) of subdivision (a), the vice chairperson shall be a member designated pursuant to subparagraph (A) or (B) of paragraph (2) of subdivision (a). If the chairperson is a member designated pursuant to subparagraph (A) or (B) of paragraph (2) of subdivision (a), the vice chairperson shall be a member designated pursuant to paragraph (1) of subdivision (a).

(c) The authority may delegate to contracting officers of the county or the trustees the power to enter into contracts on behalf of the authority.

(d) The authority may delegate by resolution to one or more of its members or an officer of the trustees or county any powers and duties as it may deem proper.

(e) The members shall serve without compensation but may receive expense reimbursement pursuant to the procedures of their appointing bodies.

(f) Four members of the authority shall constitute a quorum. The affirmative vote of a majority of a quorum shall be necessary for any action taken by the authority. A vacancy in the membership of the authority shall not impair the right of a quorum to exercise all the rights and perform all the duties of the authority. Each meeting of the authority shall be open to the public and shall be held in accordance with Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2. Resolutions of the authority need not be published or posted.

67475. (a) Except as provided by subdivision (b), the General Counsel of the California State University, as appointed by the trustees, shall be the legal counsel for the authority.

(b) Upon the approval of the General Counsel of the California State University, the authority may employ legal counsel as, in its judgment, is necessary or advisable to enable it to carry out the duties and functions of the authority pursuant to this title, including, but not limited to, the employment of bond counsel in connection with the issuance of bonds.

(c) The trustees shall provide the services of a secretary, treasurer, controller, and other staff for the authority.

67476. (a) This title shall be administered by the authority, which shall have and is hereby vested with all powers reasonably necessary or proper to carry out the powers and responsibilities expressly granted or imposed, or reasonably implied, under this title.

(b) (1) The authority may exercise any power common to the county and the trustees necessary to carry out this title, and it shall have the power to issue bonds, notes, and other debt instruments.

(2) Obligations and liabilities of the authority do not constitute debt or liabilities of the state or of any political subdivision thereof, other than the authority, and do not constitute a pledge of the full faith and credit of the state or any of its political subdivisions. All bonds, notes, and other debt instruments issued by the authority shall contain on the face thereof, where applicable, the following statement: "Neither the full faith and credit nor the taxing power of the State of California is pledged to the payment of the principal of, or interest on, the bond."

(3) Neither the authority nor the California State University shall at any time use or permit the use of the facilities at the site in such a manner or to such a degree that the tax-exempt status of bonds issued by the State of California, the California State Public Works Board, or the California State University would be adversely affected. Both the authority and the California State University shall monitor the use of the facilities improved with the proceeds of the tax-exempt bonds to ensure that the requirements of this section are satisfied.

(c) The authority may do all of the following:

(1) Adopt bylaws for the regulation of its affairs and the conduct of its business.

(2) Adopt an official seal.

(3) Sue and be sued in its own name.

(4) Receive and accept gifts, grants, loans, or donations of money, property, labor, or other things of value, for any of the purposes of this title from any of the following:

(A) A federal agency.

(B) A state agency.

(C) A municipality, county, or other political subdivision of the state.

(D) An individual, association, or corporation.

(5) Engage the services of private consultants to render professional and technical assistance and advice in carrying out the purposes of this title.

(6) (A) Determine the location and character of any project or educational facility and acquire, construct, enlarge, remodel, renovate, alter, improve, furnish, equip, own, maintain, manage, repair, operate, sell, lease as lessee or lessor, or regulate the project or educational facility.

(B) Enter into contracts for any of the purposes specified in this title, including, but not limited to, contracts for the management and operation of a project or other facilities owned by the authority.

(C) Designate a participating institution as its agent, with authority to enter into contracts, for any of the purposes specified in this title.

(7) Acquire, directly or by and through a participating institution as its agent, by purchase solely from funds provided pursuant to this title, or by gift or devise, and sell, by installment or otherwise, lands, structures, real or personal property, tangible or intangible property, rights, rights-of-way, franchises, easements, and other interests in property, including, but not limited to, lands lying under water and riparian rights, which the authority deems necessary or convenient for the acquisition, construction, financing, or operation of a project or an educational facility. The authority may do so upon the terms, and at the prices, it considers reasonable and upon which it can agree with the owner, and may take the title to the interest in the name of the authority.

(8) Make, directly or through a lending institution, secured or unsecured loans to, or purchase secured or unsecured loans from, a participating institution for any of the following purposes:

(A) To finance a project or provide working capital.

(B) To refinance indebtedness incurred by the participating institution in connection with projects undertaken, educational facilities acquired, or working capital financed.

(9) Mortgage all or any portion of interest of the authority in a project or other educational facility and the property on which that project or other educational facility is located whether owned or thereafter acquired, including the granting of a security interest in any property, tangible, or intangible and to assign or pledge all or any portion of the interests of the authority in mortgages, deeds of trust, indentures of mortgage or trust or similar instruments, notes and security interest in property, tangible or intangible, or future payments owed to the authority from participating institutions to which the authority has made loans, and the revenues therefrom, as well as moneys held by the authority on those payments or income from any owned or held by the authority, for the benefit of the holders of bonds issued to finance the project or educational facility or issued to refund or refinance outstanding bonds or indebtedness of participating institutions as permitted by this title.

(10) Upon the terms and conditions the authority deems proper, lease a project or educational facility being financed pursuant to this title to a person, partnership, corporation, or participating institution, and charge and collect rent therefor. The site authority shall ensure that all lease transactions are based upon fair market value rental rates appropriate to the type of facility, the terms of the lease, and the needs of the site authority. The authority may terminate a lease pursuant to this paragraph upon the lessee's failure to comply with any of its obligations under the lease. The lease may include, but need not be limited to, any of the following provisions:

(A) The lessee shall have the option to renew the term of the lease for the period or periods, and at the rent, determined by the authority, or to purchase any or all of the lease property.

(B) Upon payment by the participating institution of all of the bonds incurred by the authority for the financing of the project or for the refinancing of the participating institution's outstanding indebtedness, the authority may convey any or all of the leased property to the lessee or lessees, with or without further consideration.

(11) (A) Obtain, or aid in obtaining, from any state or federal agency or any private company, any insurance, guarantee, surety bond, letter or line of credit, or standby purchase agreement regarding, or of, or for, the payment or repayment of all or part of the interest, principal, or both, on any loan, lease, or obligation, or any instrument evidencing or securing the same, made or entered into pursuant to this title, or on any bonds issued pursuant to this title.

(B) Notwithstanding any other provision of this title, enter into any agreement, contract, or any other instrument regarding any insurance, guarantee, surety bond, letter or line of credit or standby purchase agreement specified in subparagraph (A), and accept payment in the manner and form provided therein in the event of default by a participating institution.

(C) Assign any insurance, guarantee, surety bond, letter, or line of credit or standby purchase agreement specified in subparagraph (A) as security for bonds issued by the authority.

(12) At the discretion of the authority, invest any moneys held in reserve or in sinking funds, or any moneys not required for immediate use of disbursement, in eligible securities pursuant to Section 16430 or investments pursuant to Section 53601.

(13) (A) Contract with the participating institution or institutions for insurance coverage from the insurance company or program and for the payment of any expenses in connection therewith, including any bonds issued to fund or finance the insurance company or program.

(B) Participate in joint risk management programs of its participating institutions, including, but not limited to, the California State University Risk Management Authority, with respect to some or all of its activities.

(14) Provide funding for self-insurance for participating institutions. Any self-insurance pooling program entered into by participating institutions that is funded or financed in whole or in part with proceeds of the sale of bonds pursuant to this title shall not be subject to regulation of any kind under the Insurance Code or otherwise as insurance, but shall only be subject to any conditions or restrictions that may be imposed by the authority.

(d) The authority shall have no power of eminent domain.

67477. A business that is located within the site shall be eligible for any applicable tax benefit as provided in Section 17049 or Section 23005 of the Revenue and Taxation Code.

67478. (a) The authority shall adopt a plan to use ad valorem property tax revenues for the benefit or support of the development of the California State University campus on the site, including, but not limited to, the mitigation of project-specific and cumulative onsite and offsite environmental impact attributable to the development of the campus as follows:

(1) As identified in the final environmental impact report for the long-term development of the campus.

(2) As determined by the trustees and the County of Ventura pursuant to an agreement under Article 2.5 (commencing with Section 65864) of Chapter 4 of Division 1 of Title 7.

(b) The authority's plan pursuant to subdivision (a) may contain a provision to divide taxes pursuant to Section 33670 of the Health and Safety Code. If the plan contains a provision to divide taxes pursuant to Section 33670 of the Health and Safety Code, the authority shall be subject to Sections 33492.13, 33492.15, 33492.16, 33492.28, and 33492.29 of the Health and Safety Code.

67479. The authority shall receive all of the local government share of sales and use tax revenues pursuant to Part 1.5 (commencing with Section 7200) of Division 2 of the Revenue and Taxation Code derived from the retail sale or use of tangible personal property that occurs on the site. In the 2030–2031 fiscal year and each fiscal year thereafter, the authority shall convey and transfer to the County of Ventura 50 percent of all sales and use tax revenues derived from the retail sale or use of tangible personal property that occurs on the site.

67480. (a) (1) The California State University, Channel Islands Site Authority Fund is hereby created in the State Treasury, to be administered by the authority. Notwithstanding Section 13340, all moneys in the fund are continuously appropriated to the authority without regard to fiscal years for the purposes of this title.

(2) All capital plans for the university portion of the site that are proposed to be funded through moneys in the fund shall be included in the annual five-year Capital Outlay Program report of the California State University that is submitted to the Legislature and the Governor each year.

(3) Notwithstanding Section 7550.5, the Trustees of the California State University, on behalf of the authority, shall report to the Legislature and the Governor by July 31 of each year on all expenditures made during the prior fiscal year for facilities that increase the enrollment capacity of the site.

(b) The authority may pledge any or all of the moneys in the fund as security for payment of the principal of, and interest on, any particular issuance of bonds pursuant to this title.

(c) As necessary or convenient to accomplish any purpose of this title, the authority may divide the fund into separate accounts.

(d) All moneys accruing to the authority pursuant to this title from any source shall be deposited in the fund.

(e) (1) Subject to any priorities created by the pledge of particular moneys in the fund to secure any issuance of bonds of the authority, and to reasonable administrative costs incurred by the authority in implementing this title, all moneys in the fund, regardless of the source, shall be held in trust for the security and payment of bonds of the authority, and shall not be used or pledged for any other purpose while any bonds are outstanding and unpaid. Nothing in this subdivision shall be construed to limit the power of the authority to make loans with bond proceeds in accordance with the terms of the resolution authorizing the issuance of those bonds.

(2) Pursuant to any agreements with the holders of particular bonds pledging any particular assets, revenues, or moneys, the authority may create separate accounts in the fund to manage the assets, revenues, or moneys in the manner prescribed by the agreements.

(f) From time to time, the authority may direct the treasurer of the authority to do any of the following:

(1) Invest moneys in the fund that are not required for its current needs, including, but not limited to, proceeds from the sale of any bonds in eligible securities specified in Section 16430 or 53601 and designated by the authority, in the resolution authorizing the issuance of the bonds payable or secured by the moneys.

(2) Deposit moneys in the fund in interest-bearing accounts in state or national banks or other financial institutions having principal offices in the state.

(3) (A) Transfer moneys in the fund to the Surplus Money Investment Fund for investment pursuant to Article 4 (commencing with Section 16470) of Chapter 3 of Part 4 of Division 4 of Title 2 or Article 1 (commencing with Section 56300) of Chapter 4 of Part 1 of Division 2 of Title 5.

(B) Notwithstanding Section 16305.7, all interest or other earnings resulting from an investment or deposit pursuant to this subdivision shall be deposited in the fund.

(g) Except as otherwise provided in paragraph (3) of subdivision (f), no moneys in the fund shall be subject to transfer to any other fund pursuant to any provision of Part 2 (commencing with Section 16300) of Division 4 of Title 2.

SEC. 2. Chapter 4.6 (commencing with Section 33498) is added to Part 1 of Division 24 of the Health and Safety Code, to read:

CHAPTER 4.6. CALIFORNIA STATE UNIVERSITY, CHANNEL ISLANDS SITE AUTHORITY

33498. (a) For purposes of this chapter, the terms "authority" and "site" have the meaning given in Section 67472 of the Government Code.

(b) With enactment of this chapter, it is the intent of the Legislature to do both of the following:

(1) Provide a means of mitigating the harmful effects and potentially blighted conditions caused by the closure of the former Camarillo State Hospital.

(2) Enhance the economic, cultural, and social development of the region by facilitating the development of a state university campus and other compatible uses on the site.

(c) The Legislature finds that the closure and conversion of major state facilities can require use of the powers provided under this part and under Section 16 of Article XVI of the California Constitution, and that the closure of the Camarillo State Hospital and the development of a California State University campus on the site as well as the development of compatible uses on the site requires development of a reuse plan by the California State University, Channel Islands Site Authority.

33498.1. (a) The reuse plan adopted by the authority shall provide for use of the site and allocation of tax revenues to the authority for reuse and development on the site with priority to development of California State University facilities on the site as set forth in Title 7.75 (commencing with Section 67470) of the Government Code. Except as provided in that title and this chapter, the authority shall be exempt from all other requirements of this part.

(b) The reuse plan shall include an implementation plan adopted and periodically revised pursuant to Section 33490.

(c) The authority shall comply with Article 6 (commencing with Section 33030) of Chapter 1.

33498.2. (a) The Legislature finds and declares that the provision of housing is itself a fundamental purpose of this part and of the authority. There is a generally inadequate supply of decent, safe, and sanitary housing on the site available to the faculty and staff of the California State University, Channel Islands, and to persons and families of low or moderate income, as defined by Section 50093. The inadequate supply of this housing threatens the accomplishment of the primary purposes of this part and of the authority. Therefore, the Legislature finds and declares that the provision of housing pursuant to this section and the use of taxes allocated to the authority pursuant to subdivision (b) of Section 33670 is of statewide benefit and of particular benefit and assistance to the redevelopment of the former Camarillo State Hospital as the site of a California State University campus.

(b) Not less than 20 percent of all taxes that are allocated to the authority pursuant to Section 33670 shall be deposited into a separate Low and Moderate Income Housing Fund, which is hereby created in the State Treasury, to be administered and used by the authority for the purposes of increasing, improving, and preserving both of the following:

(1) Housing on the site for the faculty and staff of the California State University, Channel Islands.

(2) Low- and moderate-income housing on the site available at affordable housing cost, as defined by Section 50052.5, to persons and families of low or moderate income, as defined in Section 50093, and very low income households, as defined in Section 50105.

(c) Any interest earned by the Low and Moderate Income Housing Fund and any repayments or other income to the authority for loans, advances, or grants, of any kind from the fund, shall accrue to and be deposited in the fund and may be used only in the manner prescribed for the fund.

(d) In carrying out the purposes of this section, the authority may, solely within the boundaries of the site, exercise any or all of the following powers:

(1) Acquire real property or building sites pursuant to Section 33334.16.

(2) Improve real property or building sites for the housing listed in subdivision (b) with onsite or offsite improvements, but only if the authority finds either of the following:

(A) The improvements are made as part of a program that results in the new construction or rehabilitation of housing.

(B) The improvements are necessary to eliminate one or more specific conditions that jeopardize the health or safety of residents.

(3) Donate real property to private or public persons or entities.

(4) Finance insurance premiums pursuant to Section 33136.

(5) Construct residential buildings or related structures.

(6) Acquire buildings or structures for residential and related uses.

(7) Rehabilitate buildings or structures for residential and related uses.

(8) Provide subsidies to, or for the benefit of, very low income persons or households, as defined by Section 50105, lower income persons or households, as defined by Section 50079.5, or persons and families of low or moderate income, as defined by Section 50093, to the extent that those persons or households cannot obtain housing at affordable costs on the open market in the vicinity of the site. These subsidies or benefits may include rental subsidies to low-income students at California State University, Channel Islands, who live in housing, including dormitories, on the site. Housing units available on the open market are those units developed without direct government subsidies.

(9) Develop plans, pay principal and interest on bonds, loans, advances, or other indebtedness, or pay financing or carrying charges.

(10) Maintain the supply of mobilehomes on the site.

(11) Preserve the availability to lower income households of affordable housing units that are assisted or subsidized by public

entities and which are threatened with imminent conversion to market rates.

(12) Pay for planning and general administration costs pursuant to subdivision (e).

(e) The Legislature intends that the authority use the Low and Moderate Income Housing Fund to the maximum extent possible to defray the costs of production, improvement, and preservation of housing solely within the site, and that the amount of money spent for planning and general administrative activities associated with the development, improvement, and preservation of that housing not be disproportionate to the amount actually spent for the costs of production, improvement, and preservation of that housing. The authority shall annually determine that the planning and administrative expenses are necessary for the production, improvement, or preservation of housing on the site. Legal, architectural, and engineering costs and other salaries, wages, and costs directly related to the planning and execution of a specific housing project and which are incurred by a nonprofit housing sponsor are not "planning and administrative costs" for the purposes of this subdivision, but are instead project costs. Planning and general administrative costs which may be paid with moneys from the Low and Moderate Income Housing Fund are those expenses that the authority incurs that are directly related to the powers listed in subdivision (d), and are limited to the following:

(1) Costs incurred for salaries, wages, and related costs of the authority's staff or for services provided through interagency agreements, and agreements with contractors, including usual related indirect costs.

(2) Costs incurred by a nonprofit corporation that are not directly attributable to a specific housing project.

(f) Housing that is produced, improved, or preserved with moneys from the Low and Moderate Income Housing Fund shall remain available for the longest period of time, as follows:

(1) The authority shall require that housing that is produced, improved, or preserved for the faculty and staff of the California State University, Channel Islands, be subject to covenants or restrictions filed in the office of the county recorder perpetually limiting the residency to those persons.

(2) The authority shall require that housing that is produced, improved, or preserved for persons and households of low or moderate income and persons and households of very low income be subject to covenants or restrictions filed in the office of the county recorder limiting the residency to those persons as follows:

(A) For owner-occupied housing units, for a period of 10 years. However, the authority may permit sales of owner-occupied units prior to the expiration of the 10-year period for a price in excess of that otherwise permitted under this subdivision pursuant to an adopted program that protects the authority's investment of moneys

from the Low and Moderate Income Housing Fund, including, but not limited to, an equity sharing program that establishes a schedule of equity sharing that permits retention by the seller of a portion of those excess proceeds based on the length of occupancy. The remainder of the excess proceeds of the sale shall be allocated to the authority and deposited in the Low and Moderate Income Housing Fund.

(B) For rental units, for a period of 15 years.

(g) The authority shall spend or encumber all property tax revenues deposited into the Low and Moderate Income Housing Fund within five years from the end of the fiscal year in which the funds were deposited into the fund. If the authority fails to spend or encumber those revenues in a timely manner, and thereafter until the authority has expended or encumbered those revenues, the agency shall not receive any property tax revenue from any source except as necessary to pay the following obligations, if any:

(1) Bonds, notes, interim certificates, debentures, or other obligations issued by the authority whether funded, refunded, assumed, or otherwise, pursuant to Article 5 (commencing with Section 33640) of Chapter 6.

(2) Loans or moneys advanced to the authority, including, but not limited to, loans from federal, state, or local agencies, or a private entity.

(3) Contractual obligations which, if breached, could subject the authority to damages or other liabilities or remedies.

(4) Obligations incurred pursuant to Section 33445.

(5) Indebtedness incurred pursuant to Section 33334.2 or 33334.6.

(6) Obligations incurred pursuant to Section 33401.

SEC. 3. The Legislature finds and declares that because of the unique circumstances applicable to the County of Ventura due to the closure of the Camarillo State Hospital and the development of a California State University campus at that site, a statute of general applicability cannot be enacted within the meaning of subdivision (b) of Section 16 of Article IV of the California Constitution. Therefore, this special statute is necessary.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district are the result of a program for which legislative authority was requested by that local agency or school district, within the meaning of Section 17556 of the Government Code and Section 6 of Article XIII B of the California Constitution.

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

SEC. 5. This act shall become operative only if the site described in Section 89009 of the Education Code is accepted by the Trustees of the California State University, as authorized under that section.

CHAPTER 862

An act to add Section 12209.6 to the Business and Professions Code, relating to weights and measures.

[Approved by Governor September 25, 1998. Filed with Secretary of State September 28, 1998.]

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

SECTION 1. Section 12209.6 is added to the Business and Professions Code, to read:

12209.6. (a) A county sealer may test and certify the accuracy of all parking meters located in the county in which the sealer has jurisdiction, including, but not limited to, parking meters owned or operated by a city, county, or a city and county.

(b) If the county sealer determines that a specific parking meter is inaccurate, the sealer shall notify the owner or operator of the meter. If the owner or operator fails to replace or repair the meter within 30 days from the date of notification of the meter's inaccuracy, the sealer may close the meter, and any person may park a vehicle free of charge in the parking space to which the inaccurate meter corresponds until such time that the owner or operator replaces or repairs the inaccurate parking meter.

(c) For purposes of this section, an "inaccurate parking meter" means a parking meter that provides less time than is paid for by a person using the metered parking space.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

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

CHAPTER 863

An act to amend Section 17511.1 of, and to add Section 17538.45 to, the Business and Professions Code, and to amend Section 502 of the Penal Code, relating to advertising.

[Approved by Governor September 26, 1998. Filed with Secretary of State September 28, 1998.]

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

SECTION 1. Section 17511.1 of the Business and Professions Code is amended to read:

17511.1. As used in this article, "telephonic seller" or "seller" means a person who, on his or her own behalf or through salespersons or through the use of an automatic dialing-announcing device, as defined in Section 2871 of the Public Utilities Code, causes a telephone solicitation or attempted telephone solicitation to occur which meets the criteria specified in subdivision (a), (b), (c), or (d) and who is not exempted by subdivision (e), as follows:

(a) A telephone solicitation or attempted telephone solicitation wherein the telephonic seller initiates telephonic contact with a prospective purchaser and represents or implies one or more of the following:

(1) That a prospective purchaser who buys one or more items will also receive additional or other items, whether or not of the same type as purchased, without further cost. For purposes of this subdivision, "further cost" does not include actual postage or common carrier delivery charges, if any.

(2) That a prospective purchaser will receive a prize or gift, if the person also encourages the prospective purchaser to do either of the following:

(A) Purchase or rent any goods or services.

(B) Pay any money, including, but not limited to, a delivery or handling charge.

(3) That a prospective purchaser is able to obtain any item or service at a price which the seller states or implies is below the regular price of the item or service offered. This paragraph shall not apply to retailers who, within the previous 12 months, have sold a majority of their goods or services through in-person sales at retail stores.

(4) That a prospective purchaser who buys office equipment or supplies will, because of some unusual event or imminent price increase, be able to buy these items at prices which are below those that are usually charged or will be charged for the items.

(5) That the seller is a person other than the person he or she is.

(6) That the items for sale are manufactured or supplied by a person other than the actual manufacturer or supplier.

(7) That the seller is offering to sell the prospective purchaser any gold, silver, or other metals, including coins, diamonds, rubies, sapphires, or other stones, coal or other minerals, or any interest in oil, gas, or mineral fields, wells, or exploration sites, or any other investment opportunity of any type whatsoever.

(8) That the seller is offering to make a loan, or to arrange or assist in arranging a loan or to assist in providing information which may lead to the obtaining of a loan, unless no payment of any kind is made until the loan proceeds are disbursed to the borrower.

(9) That a prospective purchaser will receive a credit card, as defined in subdivision (a) of Section 1747.02 of the Civil Code, if the purchaser pays an up front or preapplication fee for the credit card to the telephonic seller.

(b) A solicitation or attempted solicitation which is made by telephone in response to inquiries generated by unrequested notifications sent by the seller to persons who have not previously purchased goods or services from the seller or who have not previously requested credit from the seller, to a prospective purchaser wherein the seller represents or implies to the recipient of the notification that any of the following applies to the recipient:

(1) That the recipient has in any manner been specially selected to receive the notification or the offer contained in the notification.

(2) That the recipient will receive a prize or gift if the recipient calls the seller.

(3) That if the recipient buys one or more items from the seller, the recipient will also receive additional or other items, whether or not of the same type as purchased, without further cost or at a cost which the seller states or implies is less than the regular price of such items.

However, this subdivision does not apply to the solicitation of sales by a catalog seller who periodically issues and delivers catalogs to potential purchasers by mail or by other means. This exception only applies if the catalog includes a written description or illustration and the sales price of each item of merchandise offered for sale, includes at least 24 full pages of written material or illustrations, is distributed in more than one state, and has an annual circulation of not less than 250,000 customers.

(c) A solicitation or attempted solicitation which is made by telephone in response to inquiries generated by advertisements on behalf of the telephonic seller wherein it is represented or implied that the seller is offering to sell to the prospective purchaser any gold, silver, or other metals, including coins, diamonds, rubies, sapphires, or other stones, coal or other minerals, or any interest in oil, gas, or mineral fields, wells, or exploration sites, or any other investment opportunity of any type whatsoever.

(d) A solicitation or attempted solicitation which is made by telephone in response to inquiries generated by advertisements on behalf of the telephonic seller wherein it is represented or implied

that the seller is offering to make a loan or to arrange or assist in arranging a loan or to assist in providing information which may lead to the obtaining of a loan, unless no payment of any kind is made until the loan proceeds are disbursed to the borrower.

(e) For purposes of this article, "telephonic seller" or "seller" does not include any of the following:

(1) A person offering or selling a security qualified under Section 25110, 25120, or 25130 of the Corporations Code or exempt from qualification under Chapter 1 (commencing with Section 25100) of Part 2 of Division 1 of Title 4 of the Corporations Code. The fact that a notice claiming an exemption under the Corporate Securities Law of 1968 is filed with the Department of Corporations does not create an exemption under this paragraph.

(2) A person licensed pursuant to Part 1 (commencing with Section 10000) of Division 4, when the solicited transaction is governed by that law.

(3) A person licensed pursuant to Chapter 9 (commencing with Section 7000) of Division 3, when the solicited transaction is governed by that law.

(4) A person licensed or certificated pursuant to Part 2 (commencing with Section 680) of Division 1 of the Insurance Code, including a person licensed pursuant to Chapter 5 (commencing with Section 1621) thereof, when the solicited transaction is governed by that law.

(5) A person offering or selling a franchise registered pursuant to Section 31110 of the Corporations Code or exempt from registration under Chapter 1 (commencing with Section 31100) of Part 2 of Division 5 of Title 4 of the Corporations Code. The fact that a notice claiming an exemption under the Franchise Investment Law is filed with the Department of Corporations does not create an exemption under this paragraph.

(6) A person soliciting the sale of a seller assisted marketing plan, as defined in Title 2.7 (commencing with Section 1812.200) of Part 4 of Division 3 of the Civil Code, who has filed with the Attorney General the documents required by Section 1812.203 of the Civil Code.

(7) A person primarily soliciting the sale of a newspaper of general circulation, as defined in Article 1 (commencing with Section 6000) of Chapter 1 of Division 7 of Title 1 of the Government Code, a magazine, or membership in a book or record club whose program operates in conformity with the requirements of Section 1584.5 of the Civil Code.

(8) A person soliciting business from prospective purchasers who have previously purchased from the business enterprise for which the person is calling.

(9) A person soliciting without the intent to complete and who does not complete the sales presentation during the telephone solicitation but completes the sales presentation at a later face-to-face

meeting between the solicitor and the prospective purchaser. However, if a seller, directly following a telephone solicitation, causes an individual whose primary purpose it is to go to the prospective purchaser to collect the payment or deliver any item purchased, this exemption does not apply.

(10) Any supervised financial institution or parent, subsidiary, or subsidiary of parent thereof. As used in this paragraph, "supervised financial institution" means any commercial bank, trust company, savings and loan association, credit union, industrial loan company, personal property broker, consumer finance lender, commercial finance lender, or insurer, provided that the institution is subject to supervision by an official or agency of this state or of the United States.

(11) A person soliciting the sale of a preneed funeral arrangement regulated by Article 9 (commencing with Section 7735) of Chapter 12 of Division 3.

(12) A person licensed pursuant to Chapter 19 (commencing with Section 9600) of Division 3 when acting pursuant to that licensure.

(13) A person soliciting the sale of services provided by a cable television system licensed or franchised pursuant to Section 53066 of the Government Code or any other authority.

(14) A person or an affiliate of a person whose business is regulated by the Public Utilities Commission.

(15) A person soliciting the sale of a commodity pursuant to Part 2 (commencing with Section 58601) of Division 21 of the Food and Agricultural Code, if the solicitation neither intends to, nor actually results in, a sale which costs the purchaser in excess of one hundred dollars ($100).

(16) An issuer or subsidiary of an issuer that has a security listed on a national securities exchange or designated as a national market system security on an interdealer quotation system by the National Association of Securities Dealers, Inc., if the exchange or interdealer quotation system has been certified by rule or order of the Commissioner of Corporations under subdivision (o) of Section 25100 of the Corporations Code. A subsidiary of an issuer that qualifies for exemption under this paragraph is not itself exempt unless not less than 60 percent of the voting power of its shares is owned by the qualifying issuer or issuers.

(17) A person soliciting exclusively the sale of telephone answering services to be provided by that person or that person's employer.

(18) A person soliciting a transaction regulated by the Commodity Futures Trading Commission if the person is registered or temporarily licensed for this activity with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. Sec. 1 et seq.), and the registration or license has not expired or been suspended or revoked.

(19) A person who sells coins or bullion at a price which is not more than 25 percent more than the price at which the seller is concurrently buying the same coins or bullion, if: (A) the seller has had a retail location in California from which he or she has been selling coins or bullion to the public in person for at least three years; (B) the telephonic solicitations are not the person's primary business and sales made telephonically make up less than 20 percent of the person's total retail sales; and (C) the person claiming an exemption pursuant to this subdivision complies with Section 17511.3, as applicable, and subdivision (p) of Section 17511.4.

(20) A person licensed pursuant to Chapter 14 (commencing with Section 1800) of Division 1 of the Financial Code to receive money for transmittal to foreign countries if the license has not expired or been suspended or revoked.

(21) A person licensed as a residential mortgage lender or servicer pursuant to Division 20 (commencing with Section 50000) of the Financial Code, when acting under the authority of that license.

(22) A corporation that meets all of the following conditions:

(A) It has been exempt from taxation under Section 23701e of the Revenue and Taxation Code for a minimum of 10 years.

(B) It has maintained its principal purpose for a minimum of 10 years.

(C) It has been incorporated in the state for a minimum of 25 years.

(f) In any civil proceeding alleging a violation of this article, the burden of proving an exemption or an exception from a definition is upon the person claiming it, and in any criminal proceeding alleging a violation of this article, the burden of producing evidence to support a defense based upon an exemption or an exception from a definition is upon the person claiming it.

(g) Compliance with this article does not satisfy nor substitute for any requirements for license, registration, or regulation mandated by other laws.

SEC. 2. Section 17538.45 is added to the Business and Professions Code, to read:

17538.45. (a) For purposes of this section, the following words have the following meanings:

(1) "Electronic mail advertisement" means any electronic mail message, the principal purpose of which is to promote, directly or indirectly, the sale or other distribution of goods or services to the recipient.

(2) "Unsolicited electronic mail advertisement" means any electronic mail advertisement that meets both of the following requirements:

(A) It is addressed to a recipient with whom the initiator does not have an existing business or personal relationship.

(B) It is not sent at the request of or with the express consent of the recipient.

(3) "Electronic mail service provider" means any business or organization qualified to do business in California that provides registered users the ability to send or receive electronic mail through equipment located in this state and that is an intermediary in sending or receiving electronic mail.

(4) "Initiation" of an unsolicited electronic mail advertisement refers to the action by the initial sender of the electronic mail advertisement. It does not refer to the actions of any intervening electronic mail service provider that may handle or retransmit the electronic message.

(5) "Registered user" means any individual, corporation, or other entity that maintains an electronic mail address with an electronic mail service provider.

(b) No registered user of an electronic mail service provider shall use or cause to be used that electronic mail service provider's equipment located in this state in violation of that electronic mail service provider's policy prohibiting or restricting the use of its service or equipment for the initiation of unsolicited electronic mail advertisements.

(c) No individual, corporation, or other entity shall use or cause to be used, by initiating an unsolicited electronic mail advertisement, an electronic mail service provider's equipment located in this state in violation of that electronic mail service provider's policy prohibiting or restricting the use of its equipment to deliver unsolicited electronic mail advertisements to its registered users.

(d) An electronic mail service provider shall not be required to create a policy prohibiting or restricting the use of its equipment for the initiation or delivery of unsolicited electronic mail advertisements.

(e) Nothing in this section shall be construed to limit or restrict the rights of an electronic mail service provider under Section 230(c)(1) of Title 47 of the United States Code, or any decision of an electronic mail service provider to permit or to restrict access to or use of its system, or any exercise of its editorial function.

(f) (1) In addition to any other action available under law, any electronic mail service provider whose policy on unsolicited electronic mail advertisements is violated as provided in this section may bring a civil action to recover the actual monetary loss suffered by that provider by reason of that violation, or liquidated damages of fifty dollars ($50) for each electronic mail message initiated or delivered in violation of this section, up to a maximum of twenty-five thousand dollars ($25,000) per day, whichever amount is greater.

(2) In any action brought pursuant to paragraph (1), the court may award reasonable attorney's fees to a prevailing party.

(3) (A) In any action brought pursuant to paragraph (1), the electronic mail service provider shall be required to establish as an element of its cause of action that prior to the alleged violation, the defendant had actual notice of both of the following:

(i) The electronic mail service provider's policy on unsolicited electronic mail advertising.

(ii) The fact that the defendant's unsolicited electronic mail advertisements would use or cause to be used the electronic mail service provider's equipment located in this state.

(B) In this regard, the Legislature finds that with rapid advances in Internet technology, and electronic mail technology in particular, Internet service providers are already experimenting with embedding policy statements directly into the software running on the computers used to provide electronic mail services in a manner that displays the policy statements every time an electronic mail delivery is requested. While the state of the technology does not support such a finding at present, the Legislature believes that, in a given case at some future date, a showing that notice was supplied via electronic means between the sending and receiving computers could be held to constitute actual notice to the sender for purposes of this paragraph.

(4) A violation of this section shall not be subject to Section 17534.

SEC. 3. Section 502 of the Penal Code is amended to read:

502. (a) It is the intent of the Legislature in enacting this section to expand the degree of protection afforded to individuals, businesses, and governmental agencies from tampering, interference, damage, and unauthorized access to lawfully created computer data and computer systems. The Legislature finds and declares that the proliferation of computer technology has resulted in a concomitant proliferation of computer crime and other forms of unauthorized access to computers, computer systems, and computer data.

The Legislature further finds and declares that protection of the integrity of all types and forms of lawfully created computers, computer systems, and computer data is vital to the protection of the privacy of individuals as well as to the well-being of financial institutions, business concerns, governmental agencies, and others within this state that lawfully utilize those computers, computer systems, and data.

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

(1) "Access" means to gain entry to, instruct, or communicate with the logical, arithmetical, or memory function resources of a computer, computer system, or computer network.

(2) "Computer network" means any system that provides communications between one or more computer systems and input/output devices including, but not limited to, display terminals and printers connected by telecommunication facilities.

(3) "Computer program or software" means a set of instructions or statements, and related data, that when executed in actual or modified form, cause a computer, computer system, or computer network to perform specified functions.

(4) "Computer services" includes, but is not limited to, computer time, data processing, or storage functions, or other uses of a computer, computer system, or computer network.

(5) "Computer system" means a device or collection of devices, including support devices and excluding calculators that are not programmable and capable of being used in conjunction with external files, one or more of which contain computer programs, electronic instructions, input data, and output data, that performs functions including, but not limited to, logic, arithmetic, data storage and retrieval, communication, and control.

(6) "Data" means a representation of information, knowledge, facts, concepts, computer software, computer programs or instructions. Data may be in any form, in storage media, or as stored in the memory of the computer or in transit or presented on a display device.

(7) "Supporting documentation" includes, but is not limited to, all information, in any form, pertaining to the design, construction, classification, implementation, use, or modification of a computer, computer system, computer network, computer program, or computer software, which information is not generally available to the public and is necessary for the operation of a computer, computer system, computer network, computer program, or computer software.

(8) "Injury" means any alteration, deletion, damage, or destruction of a computer system, computer network, computer program, or data caused by the access.

(9) "Victim expenditure" means any expenditure reasonably and necessarily incurred by the owner or lessee to verify that a computer system, computer network, computer program, or data was or was not altered, deleted, damaged, or destroyed by the access.

(10) "Computer contaminant" means any set of computer instructions that are designed to modify, damage, destroy, record, or transmit information within a computer, computer system, or computer network without the intent or permission of the owner of the information. They include, but are not limited to, a group of computer instructions commonly called viruses or worms, that are self-replicating or self-propagating and are designed to contaminate other computer programs or computer data, consume computer resources, modify, destroy, record, or transmit data, or in some other fashion usurp the normal operation of the computer, computer system, or computer network.

(11) "Internet domain name" means a globally unique, hierarchical reference to an Internet host or service, assigned through centralized Internet naming authorities, comprising a series of character strings separated by periods, with the rightmost character string specifying the top of the hierarchy.

(c) Except as provided in subdivision (h), any person who commits any of the following acts is guilty of a public offense:

(1) Knowingly accesses and without permission alters, damages, deletes, destroys, or otherwise uses any data, computer, computer system, or computer network in order to either (A) devise or execute any scheme or artifice to defraud, deceive, or extort, or (B) wrongfully control or obtain money, property, or data.

(2) Knowingly accesses and without permission takes, copies, or makes use of any data from a computer, computer system, or computer network, or takes or copies any supporting documentation, whether existing or residing internal or external to a computer, computer system, or computer network.

(3) Knowingly and without permission uses or causes to be used computer services.

(4) Knowingly accesses and without permission adds, alters, damages, deletes, or destroys any data, computer software, or computer programs which reside or exist internal or external to a computer, computer system, or computer network.

(5) Knowingly and without permission disrupts or causes the disruption of computer services or denies or causes the denial of computer services to an authorized user of a computer, computer system, or computer network.

(6) Knowingly and without permission provides or assists in providing a means of accessing a computer, computer system, or computer network in violation of this section.

(7) Knowingly and without permission accesses or causes to be accessed any computer, computer system, or computer network.

(8) Knowingly introduces any computer contaminant into any computer, computer system, or computer network.

(9) Knowingly and without permission uses the Internet domain name of another individual, corporation, or entity in connection with the sending of one or more electronic mail messages, and thereby damages or causes damage to a computer, computer system, or computer network.

(d) (1) Any person who violates any of the provisions of paragraph (1), (2), (4), or (5) of subdivision (c) is punishable by a fine not exceeding ten thousand dollars ($10,000), or by imprisonment in the state prison for 16 months, or two or three years, or by both that fine and imprisonment, or by a fine not exceeding five thousand dollars ($5,000), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment.

(2) Any person who violates paragraph (3) of subdivision (c) is punishable as follows:

(A) For the first violation that does not result in injury, and where the value of the computer services used does not exceed four hundred dollars ($400), by a fine not exceeding five thousand dollars ($5,000), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment.

(B) For any violation that results in a victim expenditure in an amount greater than five thousand dollars ($5,000) or in an injury, or

if the value of the computer services used exceeds four hundred dollars ($400), or for any second or subsequent violation, by a fine not exceeding ten thousand dollars ($10,000), or by imprisonment in the state prison for 16 months, or two or three years, or by both that fine and imprisonment, or by a fine not exceeding five thousand dollars ($5,000), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment.

(3) Any person who violates paragraph (6), (7), or (8) of subdivision (c) is punishable as follows:

(A) For a first violation that does not result in injury, an infraction punishable by a fine not exceeding two hundred fifty dollars ($250).

(B) For any violation that results in a victim expenditure in an amount not greater than five thousand dollars ($5,000), or for a second or subsequent violation, by a fine not exceeding five thousand dollars ($5,000), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment.

(C) For any violation that results in a victim expenditure in an amount greater than five thousand dollars ($5,000), by a fine not exceeding ten thousand dollars ($10,000), or by imprisonment in the state prison for 16 months, or two or three years, or by both that fine and imprisonment, or by a fine not exceeding five thousand dollars ($5,000), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment.

(4) Any person who violates paragraph (9) of subdivision (c) is punishable as follows:

(A) For a first violation that does not result in injury, an infraction punishable by a fine not exceeding two hundred fifty dollars ($250).

(B) For any violation that results in injury, or for a second or subsequent violation, by a fine not exceeding five thousand dollars ($5,000), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment.

(e) (1) In addition to any other civil remedy available, the owner or lessee of the computer, computer system, computer network, computer program, or data may bring a civil action against any person convicted under this section for compensatory damages, including any expenditure reasonably and necessarily incurred by the owner or lessee to verify that a computer system, computer network, computer program, or data was or was not altered, damaged, or deleted by the access. For the purposes of actions authorized by this subdivision, the conduct of an unemancipated minor shall be imputed to the parent or legal guardian having control or custody of the minor, pursuant to the provisions of Section 1714.1 of the Civil Code.

(2) In any action brought pursuant to this subdivision the court may award reasonable attorney's fees to a prevailing party.

(3) A community college, state university, or academic institution accredited in this state is required to include computer-related crimes as a specific violation of college or university student conduct

policies and regulations that may subject a student to disciplinary sanctions up to and including dismissal from the academic institution. This paragraph shall not apply to the University of California unless the Board of Regents adopts a resolution to that effect.

(f) This section shall not be construed to preclude the applicability of any other provision of the criminal law of this state which applies or may apply to any transaction, nor shall it make illegal any employee labor relations activities that are within the scope and protection of state or federal labor laws.

(g) Any computer, computer system, computer network, or any software or data, owned by the defendant, that is used during the commission of any public offense described in subdivision (c) or any computer, owned by the defendant, which is used as a repository for the storage of software or data illegally obtained in violation of subdivision (c) shall be subject to forfeiture, as specified in Section 502.01.

(h) (1) Subdivision (c) does not apply to any person who accesses his or her employer's computer system, computer network, computer program, or data when acting within the scope of his or her lawful employment.

(2) Paragraph (3) of subdivision (c) does not apply to any employee who accesses or uses his or her employer's computer system, computer network, computer program, or data when acting outside the scope of his or her lawful employment, so long as the employee's activities do not cause an injury, as defined in paragraph (8) of subdivision (b), to the employer or another, or so long as the value of supplies and computer services, as defined in paragraph (4) of subdivision (b), which are used do not exceed an accumulated total of one hundred dollars ($100).

(i) No activity exempted from prosecution under paragraph (2) of subdivision (h) which incidentally violates paragraph (2), (4), or (7) of subdivision (c) shall be prosecuted under those paragraphs.

(j) For purposes of bringing a civil or a criminal action under this section, a person who causes, by any means, the access of a computer, computer system, or computer network in one jurisdiction from another jurisdiction is deemed to have personally accessed the computer, computer system, or computer network in each jurisdiction.

(k) In determining the terms and conditions applicable to a person convicted of a violation of this section the court shall consider the following:

(1) The court shall consider prohibitions on access to and use of computers.

(2) Except as otherwise required by law, the court shall consider alternate sentencing, including community service, if the defendant shows remorse and recognition of the wrongdoing, and an inclination not to repeat the offense.

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 864

An act to amend Sections 44670.5 and 52870 of, and to add Chapter 1.5 (commencing with Section 51100) to Part 28 of, the Education Code, relating to education.

[Approved by Governor September 26, 1998. Filed with Secretary of State September 28, 1998.]

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

SECTION 1. Section 44670.5 of the Education Code is amended to read:

44670.5. (a) Each school that is receiving funds for the purposes of this article or that chooses to utilize the provisions of this article shall have a single plan to strengthen subject matter and instruction, consistent with rules and regulations adopted by the school district governing board. If a school develops or has developed a school plan pursuant to Article 3 (commencing with Section 52850) of Chapter 12 of Part 28 of the School-Based Program Coordination Act, the planning requirements of this article shall be met by including within that plan the requirements specified in Section 44670.9 and by meeting the requirements of Sections 44670.3 and this section.

(b) If a school develops or has developed a school plan pursuant to the School-Based Pupil Motivation and Maintenance Program and Dropout Recovery Act, Article 7 (commencing with Section 54720) of Chapter 9 of Part 29, or any other state or federal categorical education program, the provision of that school plan shall be included within the plan to strengthen subject matter and instruction, developed pursuant to this article and, in so doing, the school shall be deemed to have complied with the requirements of those programs. The plans shall include professional development of the personnel employed at the school necessary to meet the requirements of the plan. The plan shall also describe opportunities for parents to

participate in professional development programs. The professional development programs shall also include all of the following:

(1) Provide opportunities for all school personnel and interested parents or guardians of pupils enrolled in the school to participate in ongoing staff development activities pursuant to the objectives specified in Section 44670.3.

(2) Be designed and implemented under the direction of parents and guardians of pupils enrolled in the school, classroom teachers, other participating school personnel, including the school principal and one or more mentor teachers, and, as appropriate, other nonadministrative certificated personnel, including, but not limited to, counselors, librarians, and nurses, and, as appropriate, in consultation with resource agencies or consortia established pursuant to Article 2 (commencing with Section 44680), institutions of higher education, and subject matter projects established pursuant to this code. Classroom teachers selected by teachers shall comprise the majority of any group designated to design professional development activities for instructional personnel.

(3) Allow for diversity in professional development activities, including, but not limited to, study of theory and rationale, observation of demonstration lessons, practice opportunities for peer coaching, consultation, and feedback in the classroom setting, and systematic observation during visits to other classrooms or schools.

(4) Be conducted during time that is set aside for that purpose throughout the year, including, but not limited to, time on a continuing basis when participating school personnel are released from their regular duties.

(5) Be evaluated and modified on a continuing basis by participating school personnel in consultation and, as appropriate, with regional resource consortia personnel and subject matter project personnel, based upon benefits to staff and pupils.

(6) Include the school principal and other administrative personnel as active continuing participants in one or more professional development activities implemented pursuant to a school development plan.

(7) Make available followup activities to assist participating staff in using newly acquired skills on the job.

(8) Promote the professional development of instructional paraprofessionals in the schools, including activities that will encourage instructional paraprofessionals to pursue the education and training necessary to become classroom teachers.

SEC. 2. Chapter 1.5 (commencing with Section 51100) is added to Part 28 of the Education Code, to read:

CHAPTER 1.5. PARENTAL INVOLVEMENT

51100. The Legislature finds and declares all of the following:

(a) It is essential to our democratic form of government that parents and guardians of schoolage children attending public schools and other citizens participate in improving public education institutions. Specifically, involving parents and guardians of pupils in the education process is fundamental to a healthy system of public education.

(b) Research has shown conclusively that early and sustained family involvement at home and at school in the education of children results both in improved pupil achievement and in schools that are successful at educating all children, while enabling them to achieve high levels of performance.

(c) All participants in the education process benefit when schools genuinely welcome, encourage, and guide families into establishing equal partnerships with schools to support pupil learning.

(d) Family and school collaborative efforts are most effective when they involve parents and guardians in a variety of roles at all grade levels, from preschool through high school.

51101. (a) Except as provided in subdivision (c), the parents and guardians of pupils enrolled in public schools have the right and should have the opportunity, as mutually supportive and respectful partners in the education of their children within the public schools, to be informed by the school, and to participate in the education of their children, as follows:

(1) Within a reasonable period of time following making the request, to observe the classroom or classrooms in which their child is enrolled or for the purpose of selecting the school in which their child will be enrolled in accordance with the requirements of any intradistrict or interdistrict pupil attendance policies or programs.

(2) Within a reasonable time of their request, to meet with their child's teacher or teachers and the principal of the school in which their child is enrolled.

(3) To volunteer their time and resources for the improvement of school facilities and school programs under the supervision of district employees, including, but not limited to, providing assistance in the classroom with the approval, and under the direct supervision, of the teacher. Although volunteer parents may assist with instruction, primary instructional responsibility shall remain with the teacher.

(4) To be notified on a timely basis if their child is absent from school without permission.

(5) To receive the results of their child's performance on standardized tests and statewide tests and information on the performance of the school that their child attends on standardized statewide tests.

(6) To request a particular school for their child, and to receive a response from the school district. This paragraph does not obligate the school district to grant the parent's request.

(7) To have a school environment for their child that is safe and supportive of learning.

(8) To examine the curriculum materials of the class or classes in which their child is enrolled.

(9) To be informed of their child's progress in school and of the appropriate school personnel whom they should contact if problems arise with their child.

(10) To have access to the school records of their child.

(11) To receive information concerning the academic performance standards, proficiencies, or skills their child is expected to accomplish.

(12) To be informed in advance about school rules, attendance policies, dress codes, and procedures for visiting the school.

(13) To receive information about any psychological testing the school does involving their child and to deny permission to give the test.

(14) To participate as a member of a parent advisory committee, schoolsite council, or site-based management leadership team, in accordance with any rules and regulations governing membership in these organizations. In order to facilitate parental participation, schoolsite councils are encouraged to schedule a bi-annual open forum for the purpose of informing parents about current school issues and activities and answering parents' questions. The meetings should be scheduled on weekends, and prior notice should be provided to parents.

(15) To question anything in their child's record that the parent feels is inaccurate or misleading or is an invasion of privacy and to receive a response from the school.

(b) In addition to the rights described in subdivision (a), parents and guardians of pupils shall have the opportunity to work together in a mutually supportive and respectful partnership with schools, and to help their children succeed in school. Each governing board of a school district shall develop jointly with parents and guardians, and shall adopt, a policy that outlines how parents or guardians of pupils, school staff, and pupils may share the responsibility for continuing the intellectual, physical, emotional, and social development and well-being of pupils at each schoolsite. The policy shall include, but is not necessarily limited to, the following:

(1) The means by which the school and parents or guardians of pupils may help pupils to achieve academic and other standards of the school.

(2) A description of the school's responsibility to provide a high quality curriculum and instructional program in a supportive and effective learning environment that enables all pupils to meet the academic expectations of the school.

(3) The manner in which the parents and guardians of pupils may support the learning environment of their children, including, but not limited to, the following:

(A) Monitoring attendance of their children.

(B) Ensuring that homework is completed and turned in on a timely basis.

(C) Participation of the children in extracurricular activities.

(D) Monitoring and regulating the television viewed by their children.

(E) Working with their children at home in learning activities that extend learning in the classroom.

(F) Volunteering in their children's classrooms, or for other activities at the school.

(G) Participating, as appropriate, in decisions relating to the education of their own child or the total school program.

(c) This section may not be construed so as to authorize a school to inform a parent or guardian, as provided in this section, or to permit participation by a parent or guardian in the education of a child, if it conflicts with a valid restraining order, protective order, or order for custody or visitation issued by a court of competent jurisdiction.

51102. Upon approval of the materials by the State Board of Education, the State Department of Education shall make materials available that describe a comprehensive partnership at a schoolsite that involves parents and guardians of pupils in the public schools of California in the education of their children in a variety of roles at all grade levels on or before December 31, 1999. The materials shall include information about the possible roles of each teacher, principal, parent or guardian, and other school personnel in fostering and participating in parent involvement activities and programs. The materials shall also include a statement that the right of parents and guardians to participate in parent activities and programs shall only apply to the extent that the participation does not conflict with a valid restraining order, protective order, or order for custody or visitation issued by a court of competent jurisdiction.

SEC. 4. Section 52870 of the Education Code is amended to read:

52870. (a) Notwithstanding any other provisions of this chapter, if a school district and school participate in the school-based program coordination, any schoolsite advisory committee may elect to designate the schoolsite council to function as that advisory committee for all purposes required by statute or regulations for a period of up to two years.

(b) If the governing board of a school district adopts a policy that establishes a schoolwide decisionmaking body at each school to promote continuous improvement through a single planning process that coordinates federal and state programs and services, then that body may be designated as a single decisionmaking or coordinating body, if the composition of the body meets the requirements of Section 52852.

(c) It is the intent of the Legislature that, to the extent possible, the members of the schoolsite council represent the composition of the school's pupil population.

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 865

An act to amend Section 17538.4 of the Business and Professions Code, relating to advertising.

[Approved by Governor September 26, 1998. Filed with Secretary of State September 28, 1998.]

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

SECTION 1. Section 17538.4 of the Business and Professions Code is amended to read:

17538.4. (a) No person or entity conducting business in this state shall facsimile (fax) or cause to be faxed, or electronically mail (e-mail) or cause to be e-mailed, documents consisting of unsolicited advertising material for the lease, sale, rental, gift offer, or other disposition of any realty, goods, services, or extension of credit unless:

(1) In the case of a fax, that person or entity establishes a toll-free telephone number that a recipient of the unsolicited faxed documents may call to notify the sender not to fax the recipient any further unsolicited documents.

(2) In the case of e-mail, that person or entity establishes a toll-free telephone number or valid sender operated return e-mail address that the recipient of the unsolicited documents may call or e-mail to notify the sender not to e-mail any further unsolicited documents.

(b) All unsolicited faxed or e-mailed documents subject to this section shall include a statement informing the recipient of the toll-free telephone number that the recipient may call, or a valid return address to which the recipient may write or e-mail, as the case may be, notifying the sender not to fax or e-mail the recipient any further unsolicited documents to the fax number, or numbers, or e-mail address, or addresses, specified by the recipient.

In the case of faxed material, the statement shall be in at least nine-point type. In the case of e-mail, the statement shall be the first

text in the body of the message and shall be of the same size as the majority of the text of the message.

(c) Upon notification by a recipient of his or her request not to receive any further unsolicited faxed or e-mailed documents, no person or entity conducting business in this state shall fax or cause to be faxed or e-mail or cause to be e-mailed any unsolicited documents to that recipient.

(d) In the case of e-mail, this section shall apply when the unsolicited e-mailed documents are delivered to a California resident via an electronic mail service provider's service or equipment located in this state. For these purposes "electronic mail service provider" means any business or organization qualified to do business in this state that provides individuals, corporations, or other entities the ability to send or receive electronic mail through equipment located in this state and that is an intermediary in sending or receiving electronic mail.

(e) As used in this section, "unsolicited e-mailed documents" means any e-mailed document or documents consisting of advertising material for the lease, sale, rental, gift offer, or other disposition of any realty, goods, services, or extension of credit that meet both of the following requirements:

(1) The documents are addressed to a recipient with whom the initiator does not have an existing business or personal relationship.

(2) The documents are not sent at the request of, or with the express consent of, the recipient.

(f) As used in this section, "fax" or "cause to be faxed" or "e-mail" or "cause to be e-mailed" does not include or refer to the transmission of any documents by a telecommunications utility or Internet service provider to the extent that the telecommunications utility or Internet service provider merely carries that transmission over its network.

(g) In the case of e-mail that consists of unsolicited advertising material for the lease, sale, rental, gift offer, or other disposition of any realty, goods, services, or extension of credit, the subject line of each and every message shall include "ADV:" as the first four characters. If these messages contain information that consists of unsolicited advertising material for the lease, sale, rental, gift offer, or other disposition of any realty, goods, services, or extension of credit, that may only be viewed, purchased, rented, leased, or held in possession by an individual 18 years of age and older, the subject line of each and every message shall include "ADV:ADLT" as the first eight characters.

(h) An employer who is the registered owner of more than one e-mail address may notify the person or entity conducting business in this state e-mailing or causing to be e-mailed, documents consisting of unsolicited advertising material for the lease, sale, rental, gift offer, or other disposition of any realty, goods, services, or extension of credit of the desire to cease e-mailing on behalf of all of the employees

who may use employer-provided and employer-controlled e-mail addresses.

(i) This section, or any part of this section, shall become inoperative on and after the date that federal law is enacted that prohibits or otherwise regulates the transmission of unsolicited advertising by electronic mail (e-mail).

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 866

An act to add Chapter 4 (commencing with Section 11759) to Part 1 of Division 10.5 of the Health and Safety Code, relating to substance abuse.

[Approved by Governor September 26, 1998. Filed with Secretary of State September 28, 1998.]

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

SECTION 1. The Legislature finds and declares all of the following:

(a) California families are confronted with challenging problems associated with drug and alcohol abuse. Families are in desperate need for assistance in the management and treatment of this adolescent and youth problem.

(b) In California, the primary strategy for challenging adolescents and drug problems has been placed on the California Youth Authority, probation departments, and other law enforcement related agencies.

(c) According to the recent report by the Drug Strategies Inc., an organization that examines and reports approaches to drug law enforcement, many police officers have concluded that heavy reliance on the criminal justice system to solve the nation's drug problems is simply not working. Sixty percent of police chiefs say law enforcement efforts to reduce drug abuse are unsuccessful, according to a nationwide 1996 Peter D. Hart Research Associates

poll; nearly half called for a fundamental overhaul of how we deal with the drug problem.

(d) The nation's chiefs of police and the American public agree that drug abuse is a major problem that is growing worse. In a 1996 poll, 6 to 10 police chiefs reported that drug abuse was the most serious problem facing their communities; more serious than domestic violence, property crime, or violent crime. In a survey a year earlier, over half of Americans reported concern about drug use among young people and the violence associated with drug trafficking. Two-thirds of police chiefs and the American public believe the drug problem has grown worse over the past five years.

(e) Perceptions of drug abuse exist despite significant government spending on drug control efforts. From 1981 to 1997, the federal government spent nearly sixty billion dollars ($60,000,000,000) on domestic drug law enforcement. Federal expenditures for domestic drug law enforcement during the years of 1991 to 1995, inclusive, were eight times larger than expenditures from the years of 1981 to 1985, inclusive. Despite these budget increases, the drug problem persists.

(f) Arrests for drug offenses (possession or sales) have risen sharply in recent years, climbing from 460,224 in 1980, to 1,167,600 in 1995.

(g) Since 1991, drug use has climbed sharply among junior high and high school students, according to the annual survey, "Monitoring the Future". Increases have been most dramatic among the youngest teens. In the past five years, drug use has more than doubled among 8th- and 10th-graders.

(h) Results from the most recent National Household Survey on Drug Abuse, reported in August 1997, suggest that these trends may be changing; in 1996, young people ages 12 through 17, reported slight declines in drug use. However, epidemiologists are cautious about interpreting the newest data since the statistically significant differences between rates of drug use in 1995 and 1996 are very small.

(i) Information from other sources, including the new "Monitoring the Future" survey, which will be released in December 1997, will be needed to determine whether teen drug use is in fact declining. Rising teen drug use has been accompanied by increasing drug arrests among juveniles. From 1991 to 1995, juvenile drug law violations (possession or sale) more than doubled. The nationwide Drug Use Forecasting system (DUF) reports that in 1996, more than half of arrested juveniles tested positive for drugs at the time of arrest, compared to less than one-fifth five years ago.

(j) This act recognizes that federal, state, and local drug control spending assigns low priority to treatment and prevention of substance abuse, and recognized the extensive research that confirms that treatment is the most cost-effective way to combat drug abuse and drug-related crimes.

(k) The 1994 Rand Study found that thirty-four million dollars ($34,000,000) invested in treatment would reduce cocaine use as much as an expenditure of two hundred forty-six million dollars ($246,000,000) for law enforcement or three hundred sixty-six million dollars ($366,000,000) for interdiction.

SEC. 2. Chapter 4 (commencing with Section 11759) is added to Part 1 of Division 10.5 of the Health and Safety Code, to read:

CHAPTER 4. ALCOHOL AND DRUG TREATMENT FOR ADOLESCENTS

11759. This act shall be known, and may be cited, as the Adolescent Alcohol and Drug Treatment and Recovery Program Act of 1998.

11759.1. The department, in collaboration with counties and providers of alcohol and drug services, shall establish community-based nonresidential and residential recovery programs to intervene and treat the problems of alcohol and drugs among youth.

11759.2. The department, in collaboration with counties and providers of alcohol and drug services, shall establish criteria for participation, programmatic requirements, and terms and conditions for funding. These criteria shall include, but not be limited to, local match requirements of 10 percent, either in-kind or in cash. The criteria shall also include consideration of indicators of drug and alcohol use among youth so that funds are targeted to localities with the highest need.

11759.3. Nothing in this chapter shall preclude regional approaches to service delivery by counties, including the utilization of community-based nonresidential and residential programs.

11759.4. The department, in collaboration with the counties and providers of alcohol and drug services, shall report to the Legislature during budget hearings regarding the status of the implementation of this chapter.

11759.5. (a) Funding for this chapter has been made to the department pursuant to Schedule (a) of Item 4200-101-0001 of the Budget Act of 1998 (Ch. 324, Stats. 1998).

(b) Of the amount appropriated to the department pursuant to subdivision (a), the department may expend up to one hundred thousand dollars ($100,000) for purposes of developing standards and procedures to implement this chapter.

CHAPTER 867

An act to add Part 7 (commencing with Section 122400) to Division 105 of the Health and Safety Code, relating to hepatitis.

[Approved by Governor September 26, 1998. Filed with Secretary of State September 28, 1998.]

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

SECTION 1. Part 7 (commencing with Section 122400) is added to Division 105 of the Health and Safety Code, to read:

PART 7. HEPATITIS C

CHAPTER 1. GENERAL PROVISIONS

122400. This chapter shall be known, and may be cited, as the Hepatitis C Education, Screening, and Treatment Act.

122405. The Legislature hereby finds and declares all of the following:

(a) Hepatitis C is classified as a silent killer, where no recognizable signs or symptoms occur until severe liver damage has occurred.

(b) Hepatitis C has been characterized by the World Health Organization as a disease of primary concern to humanity.

(c) Studies indicate that 1.8 percent of the population, nearly 4 million Americans, carry the virus HCV that causes hepatitis C. In California, as many as 500,000 individuals may be carriers and could develop the debilitating and potentially deadly liver disease associated with hepatitis C in their lifetime. An expert panel, convened in March by the National Institutes of Health (NIH), estimated that 30,000 acute new infections occur each year in the United States, and only 25 to 30 percent of those are diagnosed. Current data sources indicate that 8,000 to 10,000 Americans die from hepatitis C each year.

(d) Studies also indicate that 39.4 percent of male inmates and 54.5 percent of female inmates in California correctional facilities have hepatitis C, 26 times higher than the general population. Upon their release from prison, these inmates present a significant health risk to the general population of California.

(e) It is the intent of the Legislature to study the adequacy of the health care delivery system as it pertains to hepatitis C.

122410. (a) The State Department of Health Services shall make available protocols and guidelines developed by the National Institutes of Health and California legislative advisory committees on hepatitis C for educating physicians and health professionals and training community service providers on the most recent scientific and medical information on hepatitis C detection, diagnosis, treatment, and therapeutic decisionmaking.

(b) The guidelines referenced in subdivision (a) may include, but not be limited to, all of the following:

(1) Tracking and reporting of both acute and chronic cases of hepatitis C by public health officials.

(2) A cost-efficient plan to screen the prison population and the medically indigent population in California.

(3) Protocols within the Department of Corrections to enable that department to provide appropriate treatment to prisoners with hepatitis C.

(4) Protocols for the education of correctional peace officers and other correctional workers who work with prisoners with hepatitis C.

(5) Protocols for public safety and health care workers who come in contact with hepatitis C patients.

(6) Surveillance programs to determine the prevalence of hepatitis C in ethnic and other high-risk populations.

(7) Education programs for high-risk individuals, including, but not limited to, individuals who received blood transfusions prior to 1992, hemophiliacs, veterans, students, and minority communities. Education programs may provide information and referral on hepatitis C including, but not limited to, education materials developed by health-related companies, community-based or national advocacy organizations, counseling, patient support groups, and existing hotlines for consumers.

(c) Nothing in this section shall be construed to require the department to develop or produce any protocol, guideline, or proposal.

CHAPTER 868

An act relating to school district reorganization.

[Approved by Governor September 26, 1998. Filed with Secretary of State September 28, 1998.]

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

SECTION 1. (a) Commencing with the 1999–2000 school year, the area of Eastview as delineated in subdivision (c) is an optional attendance area. Parents and legal guardians residing in the area of Eastview may make an election for each pupil as to whether that pupil will attend schools in the Palos Verdes Peninsula Unified School District or the Los Angeles Unified School District. For the 1999–2000 school year, the parents or legal guardians of all pupils who reside in the area of Eastview may make an election by March 1, 1999, as to the school district their child or children will attend. For the 2000–01 school year and each subsequent school year, the parents or legal guardians residing in the area of Eastview shall make their initial election as to the school district their child or children will attend by May 1 of the school year in which the pupil first enters elementary school, and shall make a second election by May 1 of the school year in which the pupil enters middle school. Parents or legal guardians

who newly move into the area of Eastview shall make their initial election as to the school district their child or children will attend when the parents or legal guardians first enroll their child or children in public school.

(b) Any school facility belonging to the Los Angeles Unified School District that is located in the area delineated in subdivision (c) shall remain the property of the Los Angeles Unified School District. The status of an employee as an employee of the Los Angeles Unified School District shall not be affected by this act.

(c) For the purposes of this section, the following are the boundaries of the area in Eastview in Los Angeles County: begin at the southeast corner of Tract #19028 as shown on map filed in book 587, pages 83 and 84, of maps in the office of the Recorder of the County of Los Angeles, said corner being angle point in the boundary of the City of Rancho Palos Verdes as same existed on November 1, 1978; thence northerly along the boundary of the City of Rolling Hills Estates as same existed on said date to its first intersection with the boundary of the City of Lomita as same existed on said date; thence easterly along said less mentioned boundary and following the same in all its various courses to the intersection of the northerly line of Lot 1 of Tract #3192 as shown on map filed in book 44, pages 91 to 94, inclusive, of said maps and the centerline of Western Avenue as shown on map filed in book 77, page 88, of record of surveys, in the office of said recorder; thence southerly along said centerline and continuing southerly along the centerline of Western Avenue as shown on map of Tract #24436 filed in book 653, pages 96 to 100, inclusive, of said maps to the centerline of Westmont Drive as shown on map of parcel map #5375 filed in book 63, pages 92 and 93, of parcel maps in the office of said recorder; thence continuing southerly along the centerline of Western Avenue as shown on said last mentioned map a distance of 67 feet; hence easterly at right angles from said last mentioned centerline a distance of 50 feet to the northerly terminous of that certain course having a bearing and length of N1343 feet 42 inches East along that certain 27 foot radius curve in said last mentioned boundary of the City of Rancho Palos Verdes, hence northerly along said last mentioned boundary to the point of beginning.

SEC. 2. The Legislature finds and declares that, for Section 1 of this act, a special law is necessary and that a general law cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the unique circumstances of the area of Eastview. The facts constituting the special circumstances are these:

The residents of the area of Eastview in Los Angeles County are part of the community of the City of Rancho Palos Verdes, as that area was annexed to that city in 1983. Thus, the residents of that area should be allowed to participate in the events and activities that surround that community, including those that are sponsored by the

Palos Verdes Peninsula Unified School District. The school district boundaries were not changed in 1983 when the city boundaries were changed which resulted in leaving the residents of the area of Eastview within the boundaries of the Los Angeles Unified School District and thereby with a different academic and recreational schedule than the community in which they actually reside. Therefore, it is the intent of the Legislature to grant to residents of the area of Eastview the right to enroll their children in the school district of the community that they belong to and identify with.

SEC. 3. This act shall become operative on July 1, 1999.

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 869

An act to amend Sections 19801, 19852, 19852A, 19852.1, 19872, and 19950.2 of the Business and Professions Code, relating to gambling.

[Approved by Governor September 26, 1998. Filed with Secretary of State September 28, 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 is not an activity to be promoted or legitimized as entertainment for children and families.

(c) (1) 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.

(2) The State of California has permitted the operation of gambling establishments for more than one hundred years. Gambling establishments were first regulated by the State of California pursuant to legislation which was enacted in 1984. Gambling establishments currently employ more than twenty thousand people in the State of California, and contribute more than one hundred million dollars in taxes and fees to California's government. Gambling establishments are lawful enterprises in the State of California, and are entitled to full protection of the laws of this state. The industry is currently in significant decline, with more than half the gambling establishments in this state closing within the past four years.

(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 gambling establishment may be opened in a city, county, or city and county in which a gambling establishment 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 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 19852 of the Business and Professions Code is amended to read:

19852. (a) In addition to other grounds stated in this chapter, the division shall consider denying a gambling license for any of the following reasons:

(1) If issuance of the license with respect to the proposed gambling establishment or expansion would tend unduly to create law enforcement problems in a city, county, or city and county other than the city, county, or city and county that has regulatory jurisdiction over the applicant's premises.

(2) If an applicant fails to conduct an economic feasibility study that demonstrates to the satisfaction of the division that the proposed gambling establishment will be economically viable, and that the

owners have sufficient resources to make the gambling establishment successful. The division shall hold a public hearing for the purposes of reviewing the feasibility study. All papers, studies, projections, pro formas, and other materials filed with the division pursuant to an economic feasibility study are public records and shall be disclosed to all interested parties.

(3) If issuance of the license is sought in respect to a new gambling establishment, or the expansion of an existing gambling establishment, that is to be located or is located near an existing school, an existing building used primarily as a place of worship, an existing playground or other area of juvenile congregation, an existing hospital, convalescence facility, or near another similarly unsuitable area, as determined by regulation of the division, which is located in a city, county, or city and county other than the city, county, or city and county that has regulatory jurisdiction over the applicant's gambling premises.

(b) For the purposes of this section, "expansion" means an increase of 25 percent or more in the number of authorized gambling tables in a gambling establishment, based on the number of gambling tables for which a license was initially issued pursuant to this chapter.

(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. 3. Section 19852A of the Business and Professions Code is amended to read:

19852A. (a) In addition to other grounds stated in this chapter, the commission shall consider denying a gambling license for any of the following reasons:

(1) If issuance of the license with respect to the proposed gambling establishment or expansion would tend unduly to create law enforcement problems in a city, county, or city and county other than the city, county, or city and county that has regulatory jurisdiction over the applicant's premises.

(2) If an applicant fails to conduct an economic feasibility study that demonstrates to the satisfaction of the commission that the proposed gambling establishment will be economically viable, and that the owners have sufficient resources to make the gambling establishment successful. The commission shall hold a public hearing for the purpose of reviewing the feasibility study. All papers, studies, projections, pro formas, and other materials filed with the commission pursuant to an economic feasibility study are public records and shall be disclosed to all interested parties.

(3) If issuance of the license is sought in respect to a new gambling establishment, or the expansion of an existing gambling establishment, that is to be located or is located near an existing

school, an existing building used primarily as a place of worship, an existing playground or other area of juvenile congregation, an existing hospital, convalescence facility, or near another similarly unsuitable area, as determined by regulation of the commission, which is located in a city, county, or city and county other than the city, county, or city and county that has regulatory jurisdiction over the applicant's gambling premises.

(b) For the purposes of this section, "expansion" means an increase of 25 percent or more in the number of authorized gambling tables in a gambling establishment, based on the number of gambling tables for which a license was initially issued pursuant to this chapter.

(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. 4. 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 gaming establishment, and the gaming establishment shall be located on the same premises as the entity's racetrack.

SEC. 5. 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, or fair market value, whichever is less, within 30 calendar days after the date of the offer. If the fair market value, or book value as provided for in the articles of 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.

SEC. 6. Section 19950.2 of the Business and Professions Code is amended to read:

19950.2. (a) On and after the effective date of this chapter, neither the governing body nor the electors of a county, city, or city and county that has not authorized legal gaming within its boundaries prior to January 1, 1996, shall authorize legal gaming.

(b) No ordinance in effect on January 1, 1996, that authorizes legal gaming within a city, county, or city and county may be amended to expand gaming in that jurisdiction beyond that permitted on January 1, 1996.

(c) Except as provided in subdivision (d), this section shall remain operative only until January 1, 2001.

(d) With respect to Alameda, Contra Costa, Los Angeles, San Mateo, and Santa Clara Counties only, due the over-concentration of gambling establishments in those counties, this section shall remain operative with respect to those counties until January 1, 2003, and as of that date is repealed.

CHAPTER 870

An act to amend, repeal, and add Sections 2272 and 2282 of, and to add and repeal Sections 2282.5 and 2287 of, the Food and Agricultural Code, relating to pest control, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 26, 1998. Filed with Secretary of State September 28, 1998.]

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

SECTION 1. The Legislature finds and declares that the exclusion of exotic pests from California is of paramount importance in maintaining the economic vitality of this state.

SEC. 2. Section 2272 of the Food and Agricultural Code is amended to read:

2272. (a) The commissioner shall submit, on a form approved by the secretary, a monthly report to the secretary concerning the commissioner's activities in the programs listed in paragraphs (1) to (10), inclusive, of subdivision (b) of Section 2282. The commissioner may prepare an annual report on the condition of agriculture in his or her county and on what is being done to eradicate, control, or manage pests, and actions relating to the exclusion of pests or quarantine against pests. The commissioner may include in the annual report information relating to organic farming methods,

biotechnology, integrated pest management, and biological control activities in the county. The commissioner shall also furnish from time to time to the director any other information the director may require.

(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. 3. Section 2272 is added to the Food and Agricultural Code, to read:

2272. (a) The commissioner shall make an annual report to the director on the condition of agriculture in his or her county and on what is being done to eradicate, control, or manage pests, and actions relating to the exclusion of pests or quarantine against pests. The commissioner may include in the annual report information relating to organic farming methods, biotechnology, integrated pest management, and biological control activities in the county. The commissioner shall also furnish from time to time to the director any other information the director may require.

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

SEC. 4. Section 2282 of the Food and Agricultural Code is amended to read:

2282. (a) Except as provided in Section 2282.5, the Secretary of Food and Agriculture or the Director of Pesticide Regulation may allocate annually to each county an amount determined by the secretary or the director not to exceed one-third of the amount expended by the county during the previous fiscal year for the programs of joint responsibility. The allocations shall be made from funds appropriated to the secretary or the director for purposes of carrying out activities of joint responsibility with the commissioners at the local levels.

(b) The annual report to the Legislature described in Section 2281 shall include his or her findings for each of the following joint programs, including the amounts allocated to and expended by the counties in the previous fiscal year and the proposed amount to be allocated by the secretary for each program for the ensuing budget year:

(1) Pest detection.
(2) Pest eradication.
(3) Pest management control.
(4) Pest exclusion.
(5) Seed inspection.
(6) Nursery inspection.
(7) Fruit and vegetable quality control.
(8) Egg quality control.
(9) Apiary inspection.
(10) Crop statistics.

The report shall also specify the programs that have been augmented with state funds each year since 1980 because of new

legislative mandates, or because of pest infestations or outbreaks occurring since that date, and the annual amounts of those augmentations.

(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. 5. Section 2282 is added to the Food and Agricultural Code, to read:

2282. (a) The Secretary of Food and Agriculture or the Director of Pesticide Regulation may allocate annually to each county an amount determined by the secretary or the director not to exceed one-third of the amount expended by the county during the previous fiscal year for the programs of joint responsibility under the jurisdiction of the secretary or director, as applicable. The allocations shall be made from funds appropriated to the secretary or the director for purposes of carrying out activities of joint responsibility with the commissioners at the local levels.

(b) The annual report of the Secretary of Food and Agriculture to the Legislature required by Section 2281 shall include his or her findings for each of the following joint programs, including the amounts allocated to, and expended by, the counties in the previous fiscal year and the proposed amount to be allocated by the secretary for each program for the ensuing budget year:

(1) Pest detection.
(2) Pest eradication.
(3) Pest management control.
(4) Pest exclusion.
(5) Seed inspection.
(6) Nursery inspection.
(7) Fruit and vegetable quality control.
(8) Egg quality control.
(9) Apiary inspection.
(10) Crop statistics.

The report shall also specify the programs that have been augmented with state funds each year since 1980 because of new legislative mandates, or because of pest infestations or outbreaks occurring since that date, and the annual amounts of those augmentations.

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

SEC. 6. Section 2282.5 is added to the Food and Agricultural Code, to read:

2282.5. (a) The development of work plans for allocation of the funding appropriated in Schedule (a) of Item 8570-101-0001 of Section 2.00 of the Budget Act of 1998 shall be the responsibility of the department. The department shall establish criteria for the development of the work plans and for allocating the appropriated funds.

(b) Of the amount appropriated in Schedule (a) of Item 8570-101-0001 of Section 2.00 of the Budget Act of 1998, five million dollars ($5,000,000) shall be utilized solely for high-risk pest exclusion activities. The work plans for the exclusion of high-risk pests shall be developed by the department with the county agricultural commissioners and in consultation with affected industry representatives. In order to determine the effectiveness of high-risk pest exclusion programs in each county, the criteria established by the department for the work plan shall include, but need not be limited to, the following:

(1) The number of high-risk plant shipments entering each county.

(2) The number of high-risk entry points in each county.

(3) The number of state action quarantine pests intercepted or detected annually in each county.

(4) The work hours expended by each county in conducting exclusion of high-risk pests.

(5) The rate of interceptions and rejections per inspection activity.

(c) To remain eligible for funding under this section, a county shall maintain its support of ongoing operational costs of the county agricultural commissioner programs listed in subdivision (b) of Section 2282, at 1997–98 fiscal year levels.

(d) Funds allocated for high-risk pest exclusion activities pursuant to subdivision (b) may not be expended for any purpose other than the exclusion of high-risk pests consistent with the work plans prescribed in subdivision (a). Funds allocated by each county on the effective date of the act adding this section during the 1997–98 Regular Session of the Legislature shall not be allocated to other programs listed in subdivision (b) of Section 2282 until the county work plan is approved by the department consistent with the funding approved in the Budget Act of 1998 for this purpose.

(e) 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. 7. Section 2287 is added to the Food and Agricultural Code, to read:

2287. (a) Whenever the commissioner determines that it is necessary to more effectively or more efficiently carry out a program listed in subdivision (b) of Section 2282, the commissioner may enter into a mutual aid agreement with other counties for the purpose of sharing staff, equipment, expertise, information, and other resources necessary to meet the needs of the program.

(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. 8. Notwithstanding Section 17610 of the Government Code, if the Committee 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 from funds appropriated in Schedule (a) of Item 8570-101-0001 of Section 2.00 of the Budget Act of 1998 to which those entities would not otherwise be entitled.

Notwithstanding Section 17580 of the Government Code, unless 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. 9. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to stem the flow of exotic pests into the state at the earliest possible date, it is necessary for this act to take effect immediately.

CHAPTER 871

An act to amend Section 1760.6 of the Welfare and Institutions Code, relating to Youth Authority facilities.

[Approved by Governor September 26, 1998. Filed with Secretary of State September 28, 1998.]

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

SECTION 1. Section 1760.6 of the Welfare and Institutions Code is amended to read:

1760.6. (a) The director may require wards of the Youth Authority to perform work necessary and proper to construct, renovate, or maintain facilities of the Youth Authority. For purposes of this section, and notwithstanding Section 10108 of the Public Contract Code, the department may construct, renovate, or maintain facilities of the Youth Authority with hired or staff labor forces, so long as wards of the Youth Authority are utilized as a majority of the labor force and so long as the estimated cost of the project, if contracted, does not exceed the project limit established by Section 10108 of the Public Contract Code, provided that projects shall not be divided for the purpose of keeping within the project limitation. The department may provide for the payment of wages to wards of the Youth Authority for work performed pursuant to this section, the sums earned to be paid in reparation, or to the parents or dependents of the ward, or to the ward, in any manner and in any proportions as the department directs.

(b) For minor capital outlay and maintenance projects that, pursuant to subdivision (a), the department has elected to accomplish with ward labor, if the department has not completed the project within the year of appropriation, then the amount of the

unencumbered balance of the project shall be determined in accordance with Section 14959 of the Government Code, under which an estimate of the amount necessary for the completion of the project, including purchase of materials, hiring of labor and wards, equipment rental, supervision, and any other items, shall be deemed a valid encumbrance and shall be included with any other valid encumbrances in determining the amount of the unencumbered balance.

(c) For the purposes of this section, at least 90 percent of any nonward day labor utilized by the department in conjunction with ward labor shall be performed by individuals who are represented by a duly authorized employee representative unless individuals with that qualification are not reasonably available.

CHAPTER 872

An act to amend Sections 5081.1 and 5084 of, to add Section 5082.4 to, and to repeal and add Section 5082.3 of, the Business and Professions Code, and to amend Section 912.8 of the Government Code, relating to state administration.

[Approved by Governor September 26, 1998. Filed with Secretary of State September 28, 1998.]

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

SECTION 1. Section 5081.1 of the Business and Professions Code is amended to read:

5081.1. An applicant for admission to the examination for a certified public accountant certificate shall comply with one of the following:

(a) He or she shall present satisfactory evidence that he or she has either of the following:

(1) A baccalaureate degree from a university, college or other four-year institution of learning accredited by a regional or national accrediting agency or association included in a list of these agencies or associations published by the United States Commissioner of Education under the requirements of Section 253 of the Veterans' Readjustment Assistance Act of 1952, known as Public Law 550 of the 82nd Congress, as amended, with a major in accounting or related subjects requiring a minimum of 45 semester units of instruction in these subjects. If the applicant has received a baccalaureate degree in a nonaccounting major, the applicant shall present satisfactory evidence of study substantially the equivalent of an accounting major, including courses in related business administration subjects.

(2) A degree or degrees from a college, university, or other institution of learning located outside the United States that is

approved by the board as the equivalent of the baccalaureate degree described in paragraph (1). The board may require an applicant under this paragraph to submit documentation of his or her education to a credentials evaluation service approved by the board for evaluation and to cause the results of this evaluation to be reported to the board. The board shall adopt regulations specifying the criteria and procedures for approval of credential evaluation services. These regulations shall, at a minimum, require that the credential evaluation service (A) furnish evaluations directly to the board; (B) furnish evaluations written in English; (C) be a member of the American Association of Collegiate Registrars and Admission Officers, the National Association of Foreign Student Affairs, or the National Association of Credential Evaluation Services; (D) be used by accredited colleges and universities; (E) be reevaluated by the board every five years; (F) maintain a complete set of reference materials as specified by the board; (G) base evaluations only upon authentic, original transcripts and degrees and have a written procedure for identifying fraudulent transcripts; (H) include in the evaluation report, for each degree held by the applicant, the equivalent degree offered in the United States, the date the degree was granted, the institution granting the degree, an English translation of the course titles, and the semester unit equivalence for each of the courses; (I) have an appeal procedure for applicants; and (J) furnish the board with information concerning the credential evaluation service that includes biographical information on evaluators and translators, three letters of references from public or private agencies, statistical information on the number of applications processed annually for the past five years, and any additional information the board may require in order to ascertain that the credential evaluation service meets the standards set forth in this paragraph and in any regulations adopted by the board.

(b) He or she shall present satisfactory evidence that he or she has successfully completed a two-year course of study at college grade or received an associate in arts degree from a junior college, either institution accredited by a regional or national accrediting agency or association that is included in a list published by the United States Commissioner of Education under the provisions of federal law specified in paragraph (1) of subdivision (a), and that he or she has studied accounting and related business administration subjects for a period of at least four years.

(c) The applicant shall show to the satisfaction of the board that he or she has had the equivalent of the educational qualifications required by subdivision (b), or shall pass a preliminary written examination approved and administered by an agency approved by the California State Department of Education and shall have completed a minimum of 10 semester units or the equivalent in accounting subjects. The 10 semester units in accounting subjects shall be completed at a college, university, or other institution of

higher learning accredited at the college level by an agency or association that is included in a list published by the United States Commissioner of Education under the federal law specified in paragraph (1) of subdivision (a).

(d) He or she shall be a public accountant registered under this chapter.

SEC. 2. Section 5082.3 of the Business and Professions Code is repealed.

SEC. 3. Section 5082.3 is added to the Business and Professions Code, to read:

5082.3. An applicant for a license as a certified public accountant may be deemed by the board to have met the examination requirements of Section 5082 if the applicant satisfies all of the following requirements:

(a) The applicant is licensed or has comparable authority under the laws of any country to engage in the practice of public accountancy.

(b) The International Qualifications Appraisal Board jointly established by the National Association of State Boards of Accountancy and the American Institute of Certified Public Accountants has determined that the standards under which the applicant was licensed or under which the applicant secured comparable authority meet its standards for admission to the International Uniform Certified Public Accountant Qualification Examination.

(c) The applicant has successfully passed the International Uniform Certified Public Accountant Qualification Examination referenced in subdivision (b).

SEC. 4. Section 5082.4 is added to the Business and Professions Code, to read:

5082.4. A Canadian Chartered Accountant in good standing may be deemed by the board to have met the examination requirements of Section 5082 if he or she has successfully passed the Canadian Chartered Accountant Uniform Certified Public Accountant Qualification Examination of the American Institute of Certified Public Accountants or the International Uniform Certified Public Accountant Qualification Examination referenced in subdivision (b) Section 5082.3.

SEC. 5. Section 5084 of the Business and Professions Code is amended to read:

5084. The board shall grant one year's credit toward fulfillment of its public accounting experience requirement to a graduate of a college who has completed a four-year course with 45 or more semester units or the equivalent thereof in the study of accounting and related business administration subjects, of which at least 20 semester units or the equivalent thereof shall be in the study of accounting.

The members of the board shall prescribe rules establishing the character and variety of experience necessary to fulfill the experience requirements set forth in this section.

SEC. 6. Section 912.8 of the Government Code is amended to read:

912.8. In the case of claims against the state, the board shall act on claims in accordance with that procedure as the board, by rule, may prescribe. It may hear evidence for and against the claims and, with the approval of the Governor, report to the Legislature those facts and recommendations concerning the claims as it deems proper. In making recommendations, the board may state and use any official or personal knowledge which any member may have touching any claim. The board may authorize any employee of the state to perform the functions of the board under this part as are prescribed by the board.

CHAPTER 873

An act to amend Sections 1502, 1559.110, and 1559.115 of, and to repeal Sections 1559.120, 1559.125, and 1559.130 of, the Health and Safety Code, and to amend Sections 11400, 11460.1, 16522, and 16522.1 of, and to repeal Section 16522.4 of, the Welfare and Institutions Code, relating to community care facilities.

[Approved by Governor September 26, 1998. Filed with Secretary of State September 28, 1998.]

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

SECTION 1. Section 1502 of the Health and Safety Code is amended to read:

1502. As used in this chapter:

(a) "Community care facility" means any facility, place, or building that is maintained and operated to provide nonmedical residential care, day treatment, adult day care, or foster family agency services for children, adults, or children and adults, including, but not limited to, the physically handicapped, mentally impaired, incompetent persons, and abused or neglected children, and includes the following:

(1) "Residential facility" means any family home, group care facility, or similar facility determined by the director, for 24-hour nonmedical care of persons in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual.

(2) "Adult day care facility" means any facility that provides nonmedical care to persons 18 years of age or older in need of personal services, supervision, or assistance essential for sustaining

the activities of daily living or for the protection of the individual on less than a 24-hour basis.

(3) "Therapeutic day services facility" means any facility that provides nonmedical care, counseling, educational or vocational support, or social rehabilitation services on less than a 24-hour basis to persons under 18 years of age who would otherwise be placed in foster care or who are returning to families from foster care. Program standards for these facilities shall be developed by the department, pursuant to Section 1530, in consultation with therapeutic day services and foster care providers.

(4) "Foster family agency" means any organization engaged in the recruiting, certifying, and training of, and providing professional support to, foster parents, or in finding homes or other places for placement of children for temporary or permanent care who require that level of care as an alternative to a group home. Private foster family agencies shall be organized and operated on a nonprofit basis.

(5) "Foster family home" means any residential facility providing 24-hour care for six or fewer foster children that is owned, leased, or rented and is the residence of the foster parent or parents, including their family, in whose care the foster children have been placed. The placement may be by a public or private child placement agency or by a court order, or by voluntary placement by a parent, parents, or guardian. It also means a foster family home described in Section 1505.2.

(6) "Small family home" means any residential facility, in the licensee's family residence, that provides 24-hour care for six or fewer foster children who have mental disorders or developmental or physical disabilities and who require special care and supervision as a result of their disabilities. A small family home may accept children with special health care needs, pursuant to subdivision (a) of Section 17710 of the Welfare and Institutions Code. In addition to placing children with special health care needs, the department may approve placement of children without special health care needs, up to the licensed capacity.

(7) "Social rehabilitation facility" means any residential facility that provides social rehabilitation services for no longer than 18 months in a group setting to adults recovering from mental illness who temporarily need assistance, guidance, or counseling. Program components shall be subject to program standards pursuant to Article 1 (commencing with Section 5670) of Chapter 2.5 of Part 2 of Division 5 of the Welfare and Institutions Code.

(8) "Community treatment facility" means any residential facility that provides mental health treatment services to children in a group setting and that has the capacity to provide secure containment. Program components shall be subject to program standards developed and enforced by the State Department of Mental Health pursuant to Section 4094 of the Welfare and Institutions Code.

Nothing in this section shall be construed to prohibit or discourage placement of persons who have mental or physical disabilities into any category of community care facility that meets the needs of the individual placed, if the placement is consistent with the licensing regulations of the department.

(9) "Full-service adoption agency" means any licensed entity engaged in the business of providing adoption services, that does all of the following:

(A) Assumes care, custody, and control of a child through relinquishment of the child to the agency or involuntary termination of parental rights to the child.

(B) Assesses the birth parents, prospective adoptive parents, or child.

(C) Places children for adoption.

(D) Supervises adoptive placements.

Private full-service adoption agencies shall be organized and operated on a nonprofit basis.

(10) "Noncustodial adoption agency" means any licensed entity engaged in the business of providing adoption services, that does all of the following:

(A) Assesses the prospective adoptive parents.

(B) Cooperatively matches children freed for adoption, who are under the care, custody, and control of a licensed adoption agency, for adoption, with assessed and approved adoptive applicants.

(C) Cooperatively supervises adoptive placements with a full-service adoptive agency, but does not disrupt a placement or remove a child from a placement.

Private noncustodial adoption agencies shall be organized and operated on a nonprofit basis.

(11) "Transitional shelter care facility" means any group care facility that provides for 24-hour nonmedical care of persons in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual. Program components shall be subject to program standards developed by the State Department of Social Services pursuant to Section 1502.3.

(12) "Transitional housing placement facility" means a community care facility licensed by the department pursuant to Section 1559.110 to provide transitional housing opportunities to persons at least 17 years of age, and not more than 18 years of age unless the requirements of Section 11403 of the Welfare and Institutions Code are met, who are in out-of-home placement under the supervision of the county department of social services or the county probation department, and who are participating in an independent living program.

(b) "Department" or "state department" means the State Department of Social Services.

(c) "Director" means the Director of Social Services.

SEC. 2. Section 1559.110 of the Health and Safety Code is amended to read:

1559.110. (a) The State Department of Social Services shall license community care facilities participating in transitional housing placement programs, as designated in Section 16522 of the Welfare and Institutions Code.

(b) Transitional housing placement programs shall provide supervised apartment living services to persons at least 17 years old, and not more than 18 years old unless the requirements of Section 11403 of the Welfare and Institutions Code are met, who are in out-of-home placement under the supervision of the county department of social services or the county probation department, and who are participating in an independent living program.

(c) Transitional housing placement program services shall include any of the following:

(1) Programs in which one or more participants in the program live in an apartment with an adult employee of the licensee.

(2) Programs in which a participant lives independently in an apartment rented or leased by the licensee located in a building in which one or more adult employees of the licensee reside and provide supervision.

(3) Programs in which a participant lives independently in an apartment rented or leased by a licensee under the supervision of the licensee if the State Department of Social Services provides approval.

(d) The department shall adopt regulations to govern transitional housing placement facilities licensed pursuant to this section.

SEC. 3. Section 1559.115 of the Health and Safety Code is amended to read:

1559.115. No applicant shall be issued a license pursuant to this article unless the county department of social services or the county probation department, in the county where the license will be issued, has certified the program as described in Section 16522.1 of the Welfare and Institutions Code.

SEC. 4. Section 1559.120 of the Health and Safety Code is repealed.

SEC. 5. Section 1559.125 of the Health and Safety Code is repealed.

SEC. 6. Section 1559.130 of the Health and Safety Code is repealed.

SEC. 7. Section 11400 of the Welfare and Institutions Code is amended to read:

11400. For the purposes of this article, the following definitions shall apply:

(a) "Aid to Families with Dependent Children-Foster Care (AFDC-FC)" means the aid provided on behalf of needy children in foster care under the terms of this division.

(b) "Case plan" means a written document which at a minimum specifies the type of home in which the child shall be placed, the

appropriateness of the home for meeting the child's needs, the agency's plan for ensuring that the child, family, and foster parents receive services, and the appropriateness of the services provided to the child, in order to meet the child's needs while in foster care, and to reunify the child with his or her family, or, when reunification is not possible, to facilitate an alternate permanent plan.

(c) "Certified family home" means a family residence certified by a licensed foster family agency and issued a certificate of approval by that agency as meeting licensing standards, and used only by that foster family agency for placements.

(d) "Family home" means the family residency of a licensee in which 24-hour care and supervision are provided for children.

(e) "Small family home" means any residential facility, in the licensee's family residence, which provides 24-hour care for six or fewer foster children who have mental disorders or developmental or physical disabilities and who require special care and supervision as a result of their disabilities.

(f) "Foster care" means the 24-hour out-of-home care provided to children whose own families are unable or unwilling to care for them, and who are in need of temporary or long-term substitute parenting.

(g) "Foster family agency" means any individual or organization engaged in the recruiting, certifying, and training of, and providing professional support to, foster parents, or in finding homes or other places for placement of children for temporary or permanent care who require that level of care as an alternative to a group home. Private foster family agencies shall be organized and operated on a nonprofit basis.

(h) "Group home" means a nondetention privately operated residential home, organized and operated on a nonprofit basis only, of any capacity, that provides services in a group setting to children in need of care and supervision, as required by paragraph (1) of subdivision (a) of Section 1502 of the Health and Safety Code.

(i) "Periodic review" means review of a child's status by the juvenile court or by an administrative review panel, which shall include a determination of the continuing need for placement in foster care, evaluation of the goals for the placement and the progress toward meeting these goals, and development of a target date for the child's return home or establishment of alternative permanent placement.

(j) "Permanency planning hearing" means a hearing conducted by the juvenile court in which the child's future status, including whether the child shall be returned home or another permanent plan shall be developed, is determined.

(k) "Placement and care" refers to the responsibility for the welfare of a child vested in an agency or organization by virtue of the agency or organization having (1) been delegated care, custody, and control of a child by the juvenile court, (2) taken responsibility, pursuant to a relinquishment or termination of parental rights on a

child, (3) taken the responsibility of supervising a child detained by the juvenile court pursuant to Section 319 or 636, or (4) signed a voluntary placement agreement for the child's placement; or to the responsibility designated to an individual by virtue of his or her being appointed the child's legal guardian.

(*l*) "Preplacement preventive services" means services which are designed to help children remain with their families by preventing or eliminating the need for removal.

(m) "Relative" means a person who can be a "caretaker relative" of a dependent child under Section 406 of the Social Security Act. "Relative" also includes any such person who is related to the child's half sibling.

(n) "Voluntary placement" means an out-of-home placement of a minor by (1) the county welfare department after the parents or guardians have requested the assistance of the county welfare department and have signed a voluntary placement agreement; or (2) the county welfare department licensed public or private adoption agency, or the department acting as an adoption agency, after the parents have requested the assistance of either the county welfare department, the licensed public or private adoption agency, or the department acting as an adoption agency for the purpose of adoption planning, and have signed a voluntary placement agreement.

(o) "Voluntary placement agreement" means a written agreement between either the county welfare department, a licensed public or private adoption agency, or the department acting as an adoption agency, and the parents or guardians of a minor which specifies, at a minimum, the following:

(1) The legal status of the child.

(2) The rights and obligations of the parents or guardians, the child, and the agency in which the child is placed.

(p) "Original placement date" means the most recent date on which the court detained a child and ordered an agency to be responsible for supervising the child or the date on which an agency assumed responsibility for a child due to termination of parental rights, relinquishment, or voluntary placement.

(q) "Transitional housing placement facility" means a community care facility licensed by the State Department of Social Services pursuant to Section 1559.110 of the Health and Safety Code to provide transitional housing opportunities to persons at least 17 years old, and not more than 18 years old unless they satisfy the requirements of Section 11403, who are in out-of-home placement under the supervision of the county department of social services or the county probation department, and who are participating in an independent living program.

(r) Transitional housing placement program means a program that has been certified by the county department of social services or the county probation department and approved by the

department to provide licensed, supervised, transitional housing opportunities to eligible youth pursuant to Section 16522.

SEC. 8. Section 11460.1 of the Welfare and Institutions Code is amended to read:

11460.1. (a) The department shall develop a ratesetting system for licensed community care facilities participating in transitional housing placement programs, as defined by Section 16522, and as described by Section 1559.110 of the Health and Safety Code. The rates shall not exceed the aggregate placement costs for these children if they had not participated in the transitional housing placement program.

(b) The department shall adopt and maintain regulations that establish a method for determining the rates for facilities specified in subdivision (a).

SEC. 9. Section 16522 of the Welfare and Institutions Code is amended to read:

16522. (a) The State Department of Social Services shall adopt regulations to govern county transitional housing placement programs that provide transitional housing services to persons at least 17 years old, and not more than 18 years old unless they satisfy the requirements of Section 11403, who are in out-of-home placement under the supervision of the county department of social services or the county probation department, and who are participating in an independent living program.

(b) The department may structure statewide implementation of transitional housing placement programs on a phased-in basis.

(c) Transitional housing placement program services shall include any of the following:

(1) Programs in which one or more participants in the program live in an apartment with an adult employee of the licensee.

(2) Programs in which a participant lives independently in an apartment rented or leased by the licensee located in a building in which one or more adult employees of the licensee reside and provide supervision.

(3) Programs in which a participant lives independently in an apartment rented or leased by a licensee under the supervision of the licensee if the State Department of Social Services provides approval.

SEC. 10. Section 16522.1 of the Welfare and Institutions Code is amended to read:

16522.1. In order to be licensed pursuant to Section 1559.110 of the Health and Safety Code, an applicant shall obtain certification from the county department of social services or the county probation department that the facility program provides all of the following:

(a) Strict admission criteria for participants in the program, including, but not limited to, consideration of the applicant's age, previous placement history, delinquency history, history of drug or alcohol abuse, level of education, mental health history, medical

problems, and work experience. The department shall review the admission criteria to ensure that the criteria are sufficient to protect participants and that they do not discriminate on the basis of race, gender, sexual orientation, or disability.

(b) Strict employment criteria that include a consideration of the employee's age, drug or alcohol history, and experience in working with persons in this age group.

(c) A training program designed to educate employees who work directly with participants about the characteristics of persons in this age group placed in long-term care settings, and designed to ensure that these employees are able to adequately supervise and counsel participants and to provide them with training in independent living skills.

(d) A detailed plan for monitoring the placement of persons under the licensee's care.

(e) A contract between the participating person and the licensee that specifically sets out the requirements for each party, and in which the licensee and the participant agree to the requirements of this article.

(f) An allowance to be provided to each participant in the program. In the case of a participant living independently, this allowance shall be sufficient for the participant to purchase food and other necessities.

(g) A system for payment for utilities, telephone, and rent.

(h) Policies regarding all of the following:

(1) Education requirements.

(2) Work expectations.

(3) Savings requirements.

(4) Personal safety.

(5) Visitors including, but not limited to, visitation by the placement auditor pursuant to subdivision (d).

(6) Emergencies.

(7) Medical problems.

(8) Disciplinary measures.

(9) Child care.

(10) Pregnancy.

(11) Curfew.

(12) Apartment cleanliness.

(13) Use of utilities and telephone.

(14) Budgeting.

(15) Care of furnishings.

(16) Decorating of apartments.

(17) Cars.

(18) Lending or borrowing money.

(19) Unauthorized purchases.

(20) Dating.

(21) Grounds for termination that may include, but shall not be limited to, illegal activities or harboring runaways.

(i) Apartment furnishings, and a policy on disposition of the furnishings when the participant completes the program.

(j) Evaluation of the participant's progress in the program and reporting to the independent living program and to the department regarding that progress.

(k) A linkage to the federal Job Training and Partnership Act (29 U.S.C. Sec. 1501 et seq.) program administered in the local area to provide employment training to eligible participants.

SEC. 11. Section 16522.4 of the Welfare and Institutions Code is repealed.

CHAPTER 874

An act to amend Section 15037.1 of the Unemployment Insurance Code, and to amend Section 19356.6 of the Welfare and Institutions Code, relating to job training, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 26, 1998. Filed with Secretary of State September 28, 1998.]

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

SECTION 1. 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 for the purpose of system, program, and instructional improvement. 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 Part B of Title 1 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 18 years of age and over and not currently enrolled in high school and participating 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) comply with the federal Privacy Act of 1974 by issuing the following notice to all participants in work force preparation programs:

PBA PRIVACY NOTICE AND STUDENT CONSENT FORM

PRIVACY NOTICE AND INFORMATION FOR STUDENTS: The State Job Training Coordinating Council (SJTCC) is gathering information about students to evaluate California's work force training system. The SJTCC is asking for your social security number and other information, as listed below.

If you agree, the school will report the following information: your name; social security number; birth date; gender; ethnicity; date of enrollment and departure from this work force education or training program; the type and amount of training and services received; whether you are economically disadvantaged, disabled, a dislocated worker, a displaced homemaker, or a veteran; whether you are deficient in basic skills or limited in English proficiency;and your education achievement level.

The SJTCC will keep this information on file in its Performance Based Accountability (PBA) System. During the three years after you complete or leave this training program, the SJTCC will gather information related to your enrollment in other education programs, your status in the work force (type of employment, wages earned, unemployment or disability payments received); and enrollment in any welfare program.

All information about you and other students will be summed up by the SJTCC to determine the success of the work force training programs you are enrolled in. You will not be individually identified in any reports made to the public. Other state and federal government agencies that are concerned with the administration of work force development programs may have access to your individual data.

You may decide whether to provide your social security number and release the other information; it is voluntary. If you do not wish to release this information, you can still enroll in work force education and training programs, or in any other education program. Your grades will not be affected. Authority to ask for your social security number for this purpose is in Section 15037.1 of the California Unemployment Insurance Code.

After you have read this form, please mark one of the choices below, then sign and date the form. Return the form to your school as soon as possible. If you would like a copy for your records, please make a copy after you have signed it and before you submit it to your school.

STUDENT CONSENT (Only students who are 18 years of age or older, and not enrolled in high school, should complete and sign this form.)

Name of student (type or print): _____

☐ YES. I have been informed of the ways my social security number and other information will be used. I have voluntarily decided to provide this information.

My Social Security Number is _____–____–_____.

☐ NO. I do not want to give my social security number or other information. I have voluntarily decided NOT to provide this information.

_____ _____
Student Signature Date

June 1998

(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.

SEC. 2. Section 19356.6 of the Welfare and Institutions Code, as amended by Chapter 329 of the Statutes of 1998, is amended to read:

19356.6. (a) The definitions contained in this subdivision shall govern the construction of this section, with respect to services provided through the Habilitation Services Program, and unless the context requires otherwise, the following terms shall have the following meanings:

(1) "Supported employment" means paid work that is integrated in the community for individuals with developmental disabilities whose vocational disability is so severe that they would be unable to achieve this employment without specialized services and would not be able to retain this employment without an appropriate level of ongoing postemployment support services.

(2) "Integrated work" means the engagement of an employee with a disability in work in a setting typically found in the community in which individuals interact with nondisabled individuals other than those who are providing services to those individuals, to the same extent that nondisabled individuals in comparable positions interact with other persons.

(3) "Supported employment placement" means the employment of an individual with a developmental disability by an employer in the community, directly or through contract with a supported employment program, and the provision of supported employment services and, the provision of ongoing postemployment services necessary for the individual to retain employment. Services for those individuals receiving one-to-one training and support services from a supported employment program shall decrease as the individual adjusts to his or her employment and the employer assumes many of those functions.

(4) For individuals receiving postemployment support services at a job coach-to-client ratio of one-to-one or one-to-two, postemployment services may be provided on or off the jobsite, except that no ancillary services may be provided pursuant to subparagraph (A) of paragraph (2) of subdivision (b).

(5) For individuals receiving postemployment support services at a job coach-to-client ratio of other than one-to-one or one-to-two, ancillary services may be provided, except that all postemployment and ancillary services shall be provided at the worksite.

(6) "Allowable supported employment services" means the services approved in the individual habilitation component and provided, to the extent allowed by the Habilitation Services Program for the purpose of achieving supported employment as an outcome for individuals with developmental disabilities, which may include any of the following:

(A) Program staff time spent conducting job analysis of supported employment opportunities for a specific consumer.

(B) Program staff time spent in the direct supervision or training of a consumer or consumers while they engage in integrated work unless other arrangements for consumer supervision, such as employer supervision reimbursed by the supported employment program, are approved by the Habilitation Services Program.

(C) Training occurring in the community, in adaptive functional and social skills necessary to ensure job adjustment and retention such as social skills, money management, and independent travel.

(D) Counseling with a consumer's significant others to ensure support of a consumer in job adjustment.

(E) Advocacy or intervention on behalf of a consumer to resolve problems affecting the consumer's work adjustment or retention.

(F) Job development to the extent authorized by the Habilitation Services Program.

(G) Ongoing postemployment support services needed to ensure the consumer's retention of the job.

(b) (1) The Habilitation Services Program shall set rates for supported employment services provided in accordance with this section. The Habilitation Services Program shall apply those rates to those work-activity programs or program components of work-activity programs approved by the department to provide supported employment and to new programs or components approved by the Habilitation Services Program to provide supported employment services. Both of these categories of programs or components shall be required to comply with the criteria set forth in subdivision (b) of Section 19356.7 to receive approval from the Habilitation Services Program.

(2) The hourly rate for supported employment services shall be twenty-seven dollars and fifty cents ($27.50). If more than one consumer is receiving supported employment services simultaneously from the same job coach, the following shall apply:

(A) The total amount reimbursed for that service shall not exceed the authorized rate for supported employment services. In addition, the Habilitation Services Program may set a higher hourly rate for supported employment services provided to an individual in this configuration, based upon the additional cost to provide ancillary

services, when there is a documented and demonstrated need for a higher rate because of the nature and severity of the disabilities of the consumer, as determined by the Habilitation Services Program.

(B) In addition, fees shall be authorized for the following:

(i) A two hundred dollar ($200) fee shall be paid upon intake of a consumer into an agency's supported employment program, unless that individual has completed a supported employment intake process with that same agency within the past 12 months, in which case no fee shall be paid.

(ii) A four hundred dollar ($400) fee shall be paid upon placement of an individual in an integrated job, unless that individual is placed with another consumer or consumers assigned to the same job coach during the same hours of employment, in which case no fee shall be paid.

(iii) A four hundred dollar ($400) fee shall be paid after a 90-day retention of a consumer in a job, unless that individual has been placed with another consumer or consumers, assigned to the same job coach during the same hours of employment, in which case no fee shall be paid.

(3) These rates shall take effect July 1, 1998.

(4) It is the intent of the Legislature that, commencing July 1, 1996, the department establish rates for both habilitation services and vocational rehabilitation supported employment services pursuant to this section.

(c) If a consumer has been placed on a waiting list for vocational rehabilitation as a result of the department's order of selection regulations, the Habilitation Services Program may pay for those supported employment services leading to job development set forth in subparagraph (B) of paragraph (2) of subdivision (b).

(d) This section shall become inoperative on July 1, 1999, and, as of January 1, 2000, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2000, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 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 comply with federal privacy laws, it is necessary for this act to take effect immediately.

CHAPTER 875

An act to amend Section 2025 of the Code of Civil Procedure, relating to depositions.

[Approved by Governor September 26, 1998. Filed with Secretary of State September 28, 1998.]

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

SECTION 1. Section 2025 of the Code of Civil Procedure is amended to read:

2025. (a) Any party may obtain discovery within the scope delimited by Section 2017, and subject to the restrictions set forth in Section 2019, by taking in California the oral deposition of any person, including any party to the action. The person deposed may be a natural person, an organization such as a public or private corporation, a partnership, an association, or a governmental agency.

(b) Subject to subdivisions (f) and (t), an oral deposition may be taken as follows:

(1) The defendant may serve a deposition notice without leave of court at any time after that defendant has been served or has appeared in the action, whichever occurs first.

(2) The plaintiff may serve a deposition notice without leave of court on any date that is 20 days after the service of the summons on, or appearance by, any defendant. However, on motion with or without notice, the court, for good cause shown, may grant to a plaintiff leave to serve a deposition notice on an earlier date.

(c) A party desiring to take the oral deposition of any person shall give notice in writing in the manner set forth in subdivision (d). However, where under subdivision (d) of Section 2020 only the production by a nonparty of business records for copying is desired, a copy of the deposition subpoena shall serve as the notice of deposition. The notice of deposition shall be given to every other party who has appeared in the action. The deposition notice, or the accompanying proof of service, shall list all the parties or attorneys for parties on whom it is served.

Where, as defined in subdivision (a) of Section 1985.3, the party giving notice of the deposition is a subpoenaing party, and the deponent is a witness commanded by a deposition subpoena to produce personal records of a consumer, the subpoenaing party shall serve on that consumer (1) a notice of the deposition, (2) the notice of privacy rights specified in subdivision (e) of Section 1985.3, and (3) a copy of the deposition subpoena.

(d) The deposition notice shall state all of the following:

(1) The address where the deposition will be taken.

(2) The date of the deposition, selected under subdivision (f), and the time it will commence.

(3) The name of each deponent, and the address and telephone number, if known, of any deponent who is not a party to the action. If the name of the deponent is not known, the deposition notice shall set forth instead a general description sufficient to identify the person or particular class to which the person belongs.

(4) The specification with reasonable particularity of any materials or category of materials to be produced by the deponent.

(5) Any intention to record the testimony by audiotape or videotape, in addition to recording the testimony by the stenographic method as required by paragraph (1) of subdivision (*l*), and any intention to record the testimony by stenographic method, through the instant visual display of the testimony. In the latter event, a copy of the deposition notice shall also be given to the deposition officer. Any offer to provide the instant visual display of the testimony or to provide rough draft transcripts to any party which is accepted prior to, or offered at, the deposition shall also be made by the deposition officer at the deposition to all parties in attendance.

(6) Any intention to reserve the right to use at trial a videotape deposition of a treating or consulting physician or of any expert witness under paragraph (4) of subdivision (u). In this event, the operator of the videotape camera shall be a person who is authorized to administer an oath, and shall not be financially interested in the action or be a relative or employee of any attorney of any of the parties.

If the deponent named is not a natural person, the deposition notice shall describe with reasonable particularity the matters on which examination is requested. In that event, the deponent shall designate and produce at the deposition those of its officers, directors, managing agents, employees, or agents who are most qualified to testify on its behalf as to those matters to the extent of any information known or reasonably available to the deponent. A deposition subpoena shall advise a nonparty deponent of its duty to make this designation, and shall describe with reasonable particularity the matters on which examination is requested.

If the attendance of the deponent is to be compelled by service of a deposition subpoena under Section 2020, an identical copy of that subpoena shall be served with the deposition notice.

(e) (1) The deposition of a natural person, whether or not a party to the action, shall be taken at a place that is, at the option of the party giving notice of the deposition, either within 75 miles of the deponent's residence, or within the county where the action is pending and within 150 miles of the deponent's residence, unless the court orders otherwise under paragraph (3).

(2) The deposition of an organization that is a party to the action shall be taken at a place that is, at the option of the party giving notice of the deposition, either within 75 miles of the organization's principal executive or business office in California, or within the county where the action is pending and within 150 miles of that office. The deposition of any other organization shall be taken within 75 miles of the organization's principal executive or business office in California, unless the organization consents to a more distant place. If the organization has not designated a principal executive or business office in California, the deposition shall be taken at a place that is, at the option of the party giving notice of the deposition, either

within the county where the action is pending, or within 75 miles of any executive or business office in California of the organization.

(3) A party desiring to take the deposition of a natural person who is a party to the action or an officer, director, managing agent, or employee of a party may make a motion for an order that the deponent attend for deposition at a place that is more distant than that permitted under paragraph (1). This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of any issue presented by the motion.

In exercising its discretion to grant or deny this motion, the court shall take into consideration any factor tending to show whether the interests of justice will be served by requiring the deponent's attendance at that more distant place, including, but not limited to, the following:

(A) Whether the moving party selected the forum.

(B) Whether the deponent will be present to testify at the trial of the action.

(C) The convenience of the deponent.

(D) The feasibility of conducting the deposition by written questions under Section 2028, or of using a discovery method other than a deposition.

(E) The number of depositions sought to be taken at a place more distant than that permitted under paragraph (1).

(F) The expense to the parties of requiring the deposition to be taken within the distance permitted under paragraph (1).

(G) The whereabouts of the deponent at the time for which the deposition is scheduled.

The order may be conditioned on the advancement by the moving party of the reasonable expenses and costs to the deponent for travel to the place of deposition.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to increase travel limits for party deponent, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(f) An oral deposition shall be scheduled for a date at least 10 days after service of the deposition notice. If, as defined in subdivision (a) of Section 1985.3, the party giving notice of the deposition is a subpoenaing party, and the deponent is a witness commanded by a deposition subpoena to produce personal records of a consumer, the deposition shall be scheduled for a date at least 20 days after issuance of that subpoena. However, in unlawful detainer actions, an oral deposition shall be scheduled for a date at least five days after service of the deposition notice, but not later than five days before trial.

On motion or ex parte application of any party or deponent, for good cause shown, the court may shorten or extend the time for

scheduling a deposition, or may stay its taking until the determination of a motion for a protective order under subdivision (i).

(g) Any party served with a deposition notice that does not comply with subdivisions (b) to (f), inclusive, waives any error or irregularity unless that party promptly serves a written objection specifying that error or irregularity at least three calendar days prior to the date for which the deposition is scheduled, on the party seeking to take the deposition and any other attorney or party on whom the deposition notice was served. If an objection is made three calendar days before the deposition date, the objecting party shall make personal service of that objection pursuant to Section 1011 on the party who gave notice of the deposition. Any deposition taken after the service of a written objection shall not be used against the objecting party under subdivision (u) if the party did not attend the deposition and if the court determines that the objection was a valid one.

In addition to serving this written objection, a party may also move for an order staying the taking of the deposition and quashing the deposition notice. This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of any issue presented by the motion. The taking of the deposition is stayed pending the determination of this motion.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to quash a deposition notice, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(h) (1) The service of a deposition notice under subdivision (c) is effective to require any deponent who is a party to the action or an officer, director, managing agent, or employee of a party to attend and to testify, as well as to produce any document or tangible thing for inspection and copying.

(2) The attendance and testimony of any other deponent, as well as the production by the deponent of any document or tangible thing for inspection and copying, requires the service on the deponent of a deposition subpoena under Section 2020.

(i) Before, during, or after a deposition, any party, any deponent, or any other affected natural person or organization may promptly move for a protective order. The motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion.

The court, for good cause shown, may make any order that justice requires to protect any party, deponent, or other natural person or organization from unwarranted annoyance, embarrassment, or oppression, or undue burden and expense. This protective order may include, but is not limited to, one or more of the following directions:

(1) That the deponent not be taken at all.

(2) That the deposition be taken at a different time.

(3) That a videotape deposition of a treating or consulting physician or of any expert witness, intended for possible use at trial under paragraph (4) of subdivision (u), be postponed until the moving party has had an adequate opportunity to prepare, by discovery deposition of the deponent, or other means, for cross-examination.

(4) That the deposition be taken at a place other than that specified in the deposition notice, if it is within a distance permitted by subdivision (e).

(5) That the deposition be taken only on certain specified terms and conditions.

(6) That the deponent's testimony be taken by written, instead of oral, examination.

(7) That the method of discovery be interrogatories to a party instead of an oral deposition.

(8) That the testimony be recorded in a manner different from that specified in the deposition notice.

(9) That certain matters not be inquired into.

(10) That the scope of the examination be limited to certain matters.

(11) That all or certain of the writings or tangible things designated in the deposition notice not be produced, inspected, or copied.

(12) That designated persons, other than the parties to the action and their officers and counsel, be excluded from attending the deposition.

(13) That a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only to specified persons or only in a specified way.

(14) That the parties simultaneously file specified documents enclosed in sealed envelopes to be opened as directed by the court.

(15) That the deposition be sealed and thereafter opened only on order of the court.

If the motion for a protective order is denied in whole or in part, the court may order that the deponent provide or permit the discovery against which protection was sought on those terms and conditions that are just.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion for a protective order, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(j) (1) If the party giving notice of a deposition fails to attend or proceed with it, the court shall impose a monetary sanction under Section 2023 against that party, or the attorney for that party, or both, and in favor of any party attending in person or by attorney, unless it finds that the one subject to the sanction acted with substantial

justification or that other circumstances make the imposition of the sanction unjust.

(2) If a deponent does not appear for a deposition because the party giving notice of the deposition failed to serve a required deposition subpoena, the court shall impose a monetary sanction under Section 2023 against that party, or the attorney for that party, or both, in favor of any other party who, in person or by attorney, attended at the time and place specified in the deposition notice in the expectation that the deponent's testimony would be taken, unless the court finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

If a deponent on whom a deposition subpoena has been served fails to attend a deposition or refuses to be sworn as a witness, the court may impose on the deponent the sanctions described in subdivision (h) of Section 2020.

(3) If, after service of a deposition notice, a party to the action or an officer, director, managing agent, or employee of a party, or a person designated by an organization that is a party under subdivision (d), without having served a valid objection under subdivision (g), fails to appear for examination, or to proceed with it, or to produce for inspection any document or tangible thing described in the deposition notice, the party giving the notice may move for an order compelling the deponent's attendance and testimony, and the production for inspection of any document or tangible thing described in the deposition notice. This motion (A) shall set forth specific facts showing good cause justifying the production for inspection of any document or tangible thing described in the deposition notice, and (B) shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by it or, when the deponent fails to attend the deposition and produce the documents or things described in the deposition notice, by a declaration stating that the petitioner has contacted the deponent to inquire about the nonappearance. If this motion is granted, the court shall also impose a monetary sanction under Section 2023 against the deponent or the party with whom the deponent is affiliated, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust. On motion of any other party who, in person or by attorney, attended at the time and place specified in the deposition notice in the expectation that the deponent's testimony would be taken, the court shall also impose a monetary sanction under Section 2023, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

If that party or party-affiliated deponent then fails to obey an order compelling attendance, testimony, and production, the court may

make those orders that are just, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Section 2023 against that party deponent or against the party with whom the deponent is affiliated. In lieu of or in addition to this sanction, the court may impose a monetary sanction under Section 2023 against that deponent or against the party with whom that party deponent is affiliated, and in favor of any party who, in person or by attorney, attended in the expectation that the deponent's testimony would be taken pursuant to that order.

(k) Except as provided in paragraph (3) of subdivision (d) of Section 2020, the deposition shall be conducted under the supervision of an officer who is authorized to administer an oath. This officer shall not be financially interested in the action and shall not be a relative or employee of any attorney of any of the parties, or of any of the parties. Any objection to the qualifications of the deposition officer is waived unless made before the deposition begins or as soon thereafter as the ground for that objection becomes known or could be discovered by reasonable diligence.

(*l*) (1) The deposition officer shall put the deponent under oath. Unless the parties agree or the court orders otherwise, the testimony, as well as any stated objections, shall be taken stenographically. The party noticing the deposition may also record the testimony by audiotape or videotape if the notice of deposition stated an intention also to record the testimony by either of those methods, or if all the parties agree that the testimony may also be recorded by either of those methods. Any other party, at that party's expense, may make a simultaneous audiotape or videotape record of the deposition, provided that other party promptly, and in no event less than three calendar days before the date for which the deposition is scheduled, serves a written notice of this intention to audiotape or videotape the deposition testimony on the party or attorney who noticed the deposition, on all other parties or attorneys on whom the deposition notice was served under subdivision (c), and on any deponent whose attendance is being compelled by a deposition subpoena under Section 2020. If this notice is given three calendar days before the deposition date, it shall be made by personal service under Section 1011. Examination and cross-examination of the deponent shall proceed as permitted at trial under the provisions of the Evidence Code.

(2) If the deposition is being recorded by means of audiotape or videotape, the following procedure shall be observed:

(A) The area used for recording the deponent's oral testimony shall be suitably large, adequately lighted, and reasonably quiet.

(B) The operator of the recording equipment shall be competent to set up, operate, and monitor the equipment in the manner prescribed in this subdivision. The operator may be an employee of the attorney taking the deposition unless the operator is also the deposition officer. However, if a videotape of deposition testimony

is to be used under paragraph (4) of subdivision (u), the operator of the recording equipment shall be a person who is authorized to administer an oath, and shall not be financially interested in the action or be a relative or employee of any attorney of any of the parties, unless all parties attending the deposition agree on the record to waive these qualifications and restrictions.

(C) The operator shall not distort the appearance or the demeanor of participants in the deposition by the use of camera or sound recording techniques.

(D) The deposition shall begin with an oral or written statement on camera or on the audiotape that includes the operator's name and business address, the name and business address of the operator's employer, the date, time, and place of the deposition, the caption of the case, the name of the deponent, a specification of the party on whose behalf the deposition is being taken, and any stipulations by the parties.

(E) Counsel for the parties shall identify themselves on camera or on the audiotape.

(F) The oath shall be administered to the deponent on camera or on the audiotape.

(G) If the length of a deposition requires the use of more than one unit of tape, the end of each unit and the beginning of each succeeding unit shall be announced on camera or on the audiotape.

(H) At the conclusion of a deposition, a statement shall be made on camera or on the audiotape that the deposition is ended and shall set forth any stipulations made by counsel concerning the custody of the audiotape or videotape recording and the exhibits, or concerning other pertinent matters.

(I) A party intending to offer an audiotaped or videotaped recording of a deposition in evidence under subdivision (u) shall notify the court and all parties in writing of that intent and of the parts of the deposition to be offered within sufficient time for objections to be made and ruled on by the judge to whom the case is assigned for trial or hearing, and for any editing of the tape. Objections to all or part of the deposition shall be made in writing. The court may permit further designations of testimony and objections as justice may require. With respect to those portions of an audiotaped or videotaped deposition that are not designated by any party or that are ruled to be objectionable, the court may order that the party offering the recording of the deposition at the trial or hearing suppress those portions, or that an edited version of the deposition tape be prepared for use at the trial or hearing. The original audiotape or videotape of the deposition shall be preserved unaltered. If no stenographic record of the deposition testimony has previously been made, the party offering a videotape or an audiotape recording of that testimony under subdivision (u) shall accompany that offer with a stenographic transcript prepared from that recording.

(3) In lieu of participating in the oral examination, parties may transmit written questions in a sealed envelope to the party taking the deposition for delivery to the deposition officer, who shall unseal the envelope and propound them to the deponent after the oral examination has been completed.

(m) (1) The protection of information from discovery on the ground that it is privileged or that it is protected work product under Section 2018 is waived unless a specific objection to its disclosure is timely made during the deposition.

(2) Errors and irregularities of any kind occurring at the oral examination that might be cured if promptly presented are waived unless a specific objection to them is timely made during the deposition. These errors and irregularities include, but are not limited to, those relating to the manner of taking the deposition, to the oath or affirmation administered, to the conduct of a party, attorney, deponent, or deposition officer, or to the form of any question or answer. Unless the objecting party demands that the taking of the deposition be suspended to permit a motion for a protective order under subdivision (n), the deposition shall proceed subject to the objection.

(3) Objections to the competency of the deponent, or to the relevancy, materiality, or admissibility at trial of the testimony or of the materials produced are unnecessary and are not waived by failure to make them before or during the deposition.

(4) If a deponent fails to answer any question or to produce any document or tangible thing under the deponent's control that is specified in the deposition notice or a deposition subpoena, the party seeking that answer or production may adjourn the deposition or complete the examination on other matters without waiving the right at a later time to move for an order compelling that answer or production under subdivision (o).

(n) The deposition officer shall not suspend the taking of testimony without stipulation of the party conducting the deposition and the deponent unless any party attending the deposition or the deponent demands the taking of testimony be suspended to enable that party or deponent to move for a protective order on the ground that the examination is being conducted in bad faith or in a manner that unreasonably annoys, embarrasses, or oppresses that deponent or party. This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion. The court, for good cause shown, may terminate the examination or may limit the scope and manner of taking the deposition as provided in subdivision (i). If the order terminates the examination, the deposition shall not thereafter be resumed, except on order of the court.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion for this protective order, unless it finds that the one

subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(o) If a deponent fails to answer any question or to produce any document or tangible thing under the deponent's control that is specified in the deposition notice or a deposition subpoena, the party seeking discovery may move the court for an order compelling that answer or production. This motion shall be made no later than 60 days after the completion of the record of the deposition, and shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion. Notice of this motion shall be given to all parties, and to the deponent either orally at the examination, or by subsequent service in writing. If the notice of the motion is given orally, the deposition officer shall direct the deponent to attend a session of the court at the time specified in the notice. Not less than five days prior to the hearing on this motion, the moving party shall lodge with the court a certified copy of any parts of the stenographic transcript of the deposition that are relevant to the motion. If a deposition is recorded by audiotape or videotape, the moving party is required to lodge a certified copy of a transcript of any parts of the deposition that are relevant to the motion. If the court determines that the answer or production sought is subject to discovery, it shall order that the answer be given or the production be made on the resumption of the deposition.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel answer or production, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

If a deponent fails to obey an order entered under this subdivision, the failure may be considered a contempt of court. In addition, if the disobedient deponent is a party to the action or an officer, director, managing agent, or employee of a party, the court may make those orders that are just against the disobedient party, or against the party with whom the disobedient deponent is affiliated, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Section 2023. In lieu of or in addition to this sanction, the court may impose a monetary sanction under Section 2023 against that party deponent or against any party with whom the deponent is affiliated.

(p) Unless the parties agree otherwise, the testimony at any deposition recorded by stenographic means shall be transcribed. The party noticing the deposition shall bear the cost of that transcription, unless the court, on motion and for good cause shown, orders that the cost be borne or shared by another party. Any other party, at that party's expense, may obtain a copy of the transcript. If the deposition officer receives a request from a party for an original or a copy of the deposition transcript, or any portion thereof, and the document will

be available to that party prior to the time the original or copy would be available to any other party, the deposition officer shall immediately notify all other parties attending the deposition of the request, and shall, upon request by any party other than the party making the original request, make that copy of the full or partial deposition transcript available to all parties at the same time. Stenographic notes of depositions shall be retained by the reporter for a period of not less than eight years from the date of the deposition, where no transcript is produced, and not less than one year from the date on which the transcript is produced. Those notes may be either on paper or electronic media, as long as it allows for satisfactory production of a transcript at any time during the periods specified. At the request of any other party to the action, including a party who did not attend the taking of the deposition testimony, any party who records or causes the recording of that testimony by means of audiotape or videotape shall promptly (1) permit that other party to hear the audiotape or to view the videotape, and (2) furnish a copy of the audiotape or videotape to that other party on receipt of payment of the reasonable cost of making that copy of the tape.

If the testimony at the deposition is recorded both stenographically, and by audiotape or videotape, the stenographic transcript is the official record of that testimony for the purpose of the trial and any subsequent hearing or appeal.

(q) (1) If the deposition testimony is stenographically recorded, the deposition officer shall send written notice to the deponent and to all parties attending the deposition when the original transcript of the testimony for each session of the deposition is available for reading, correcting, and signing, unless the deponent and the attending parties agree on the record that the reading, correcting, and signing of the transcript of the testimony will be waived or that the reading, correcting, and signing of a transcript of the testimony will take place after the entire deposition has been concluded or at some other specific time. For 30 days following each such notice, unless the attending parties and the deponent agree on the record or otherwise in writing to a longer or shorter time period, the deponent may change the form or the substance of the answer to a question, and may either approve the transcript of the deposition by signing it, or refuse to approve the transcript by not signing it.

Alternatively, within this same period, the deponent may change the form or the substance of the answer to any question and may approve or refuse to approve the transcript by means of a letter to the deposition officer signed by the deponent which is mailed by certified or registered mail with return receipt requested. A copy of that letter shall be sent by first-class mail to all parties attending the deposition. For good cause shown, the court may shorten the 30-day period for making changes, approving, or refusing to approve the transcript.

The deposition officer shall indicate on the original of the transcript, if the deponent has not already done so at the office of the deposition officer, any action taken by the deponent and indicate on the original of the transcript, the deponent's approval of, or failure or refusal to approve, the transcript. The deposition officer shall also notify in writing the parties attending the deposition of any changes which the deponent timely made in person. If the deponent fails or refuses to approve the transcript within the allotted period, the deposition shall be given the same effect as though it had been approved, subject to any changes timely made by the deponent. However, on a seasonable motion to suppress the deposition, accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion, the court may determine that the reasons given for the failure or refusal to approve the transcript require rejection of the deposition in whole or in part.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to suppress a deposition, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(2) If there is no stenographic transcription of the deposition, the deposition officer shall send written notice to the deponent and to all parties attending the deposition that the recording is available for review, unless the deponent and all these parties agree on the record to waive the hearing or viewing of an audiotape or videotape recording of the testimony. For 30 days following this notice the deponent, either in person or by signed letter to the deposition officer, may change the substance of the answer to any question.

The deposition officer shall set forth in a writing to accompany the recording any changes made by the deponent, as well as either the deponent's signature identifying the deposition as his or her own, or a statement of the deponent's failure to supply the signature, or to contact the officer within the allotted period. When a deponent fails to contact the officer within the allotted period, or expressly refuses by a signature to identify the deposition as his or her own, the deposition shall be given the same effect as though signed. However, on a seasonable motion to suppress the deposition, accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion, the court may determine that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to suppress a deposition, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(r) (1) The deposition officer shall certify on the transcript of the deposition, or in a writing accompanying an audiotaped or videotaped deposition as described in paragraph (2) of subdivision (q), that the deponent was duly sworn and that the transcript or recording is a true record of the testimony given.

(2) When prepared as a rough draft transcript, the transcript of the deposition may not be certified and may not be used, cited, or transcribed as the certified transcript of the deposition proceedings. The rough draft transcript may not be cited or used in any way or at any time to rebut or contradict the certified transcript of deposition proceedings as provided by the deposition officer.

(s) (1) The certified transcript of a deposition shall not be filed with the court. Instead, the deposition officer shall securely seal that transcript in an envelope or package endorsed with the title of the action and marked: "Deposition of (here insert name of deponent)," and shall promptly transmit it to the attorney for the party who noticed the deposition. This attorney shall store it under conditions that will protect it against loss, destruction, or tampering.

The attorney to whom the transcript of a deposition is transmitted shall retain custody of it until six months after final disposition of the action. At that time, the transcript may be destroyed, unless the court, on motion of any party and for good cause shown, orders that the transcript be preserved for a longer period.

(2) An audiotape or videotape record of deposition testimony, including a certified tape made by an operator qualified under subparagraph (B) of paragraph (2) of subdivision (*l*), shall not be filed with the court. Instead, the operator shall retain custody of that record and shall store it under conditions that will protect it against loss, destruction, or tampering, and preserve as far as practicable the quality of the tape and the integrity of the testimony and images it contains.

At the request of any party to the action, including a party who did not attend the taking of the deposition testimony, or at the request of the deponent, that operator shall promptly (A) permit the one making the request to hear or to view the tape on receipt of payment of a reasonable charge for providing the facilities for hearing or viewing the tape, and (B) furnish a copy of the audiotape or the videotape recording to the one making the request on receipt of payment of the reasonable cost of making that copy of the tape.

The attorney or operator who has custody of an audiotape or videotape record of deposition testimony shall retain custody of it until six months after final disposition of the action. At that time, the audiotape or videotape may be destroyed or erased, unless the court, on motion of any party and for good cause shown, orders that the tape be preserved for a longer period.

(t) Once any party has taken the deposition of any natural person, including that of a party to the action, neither the party who gave, nor any other party who has been served with a deposition notice

pursuant to subdivision (c) may take a subsequent deposition of that deponent. However, for good cause shown, the court may grant leave to take a subsequent deposition, and the parties, with the consent of any deponent who is not a party, may stipulate that a subsequent deposition be taken. This subdivision does not preclude taking one subsequent deposition of a natural person who has previously been examined (1) as a result of that person's designation to testify on behalf of an organization under subdivision (d), or (2) for the limited purpose of discovering pursuant to Section 485.230 the identity, location, and value of property in which the deponent has an interest. This subdivision does not authorize the taking of more than one deposition for the limited purpose of Section 485.230.

(u) At the trial or any other hearing in the action, any part or all of a deposition may be used against any party who was present or represented at the taking of the deposition, or who had due notice of the deposition and did not serve a valid objection under subdivision (g), so far as admissible under the rules of evidence applied as though the deponent were then present and testifying as a witness, in accordance with the following provisions:

(1) Any party may use a deposition for the purpose of contradicting or impeaching the testimony of the deponent as a witness, or for any other purpose permitted by the Evidence Code.

(2) An adverse party may use for any purpose, a deposition of a party to the action, or of anyone who at the time of taking the deposition was an officer, director, managing agent, employee, agent, or designee under subdivision (d) of a party. It is not ground for objection to the use of a deposition of a party under this paragraph by an adverse party that the deponent is available to testify, has testified, or will testify at the trial or other hearing.

(3) Any party may use for any purpose the deposition of any person or organization, including that of any party to the action, if the court finds any of the following:

(A) The deponent resides more than 150 miles from the place of the trial or other hearing.

(B) The deponent, without the procurement or wrongdoing of the proponent of the deposition for the purpose of preventing testimony in open court, is (i) exempted or precluded on the ground of privilege from testifying concerning the matter to which the deponent's testimony is relevant, (ii) disqualified from testifying, (iii) dead or unable to attend or testify because of existing physical or mental illness or infirmity, (iv) absent from the trial or other hearing and the court is unable to compel the deponent's attendance by its process, or (v) absent from the trial or other hearing and the proponent of the deposition has exercised reasonable diligence but has been unable to procure the deponent's attendance by the court's process.

(C) Exceptional circumstances exist that make it desirable to allow the use of any deposition in the interests of justice and with due

regard to the importance of presenting the testimony of witnesses orally in open court.

(4) Any party may use a videotape deposition of a treating or consulting physician or of any expert witness even though the deponent is available to testify if the deposition notice under subdivision (d) reserved the right to use the deposition at trial, and if that party has complied with subparagraph (I) of paragraph (2) of subdivision (*l*).

(5) Subject to the requirements of this section, a party may offer in evidence all or any part of a deposition, and if the party introduces only part of the deposition, any other party may introduce any other parts that are relevant to the parts introduced.

(6) Substitution of parties does not affect the right to use depositions previously taken.

(7) When an action has been brought in any court of the United States or of any state, and another action involving the same subject matter is subsequently brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the initial action may be used in the subsequent action as if originally taken in that subsequent action. A deposition previously taken may also be used as permitted by the Evidence Code.

CHAPTER 876

An act to amend Sections 1481, 5956.3, 6505, 14670.15, 24352, 25332, 25537, 29065.5, 53750, 54954.5, and 61601.25 of, and to repeal Section 17580 of, the Government Code, to amend Section 6840 of, to add Section 6835.1 to, and to repeal Sections 6831 and 6842 of, the Harbors and Navigation Code, to amend Section 40002 of, and to add Sections 39014.3 and 39014.5 to, the Health and Safety Code, to amend Sections 1600 and 21061 of the Public Contract Code, to amend Sections 5540.5 and 6217 of the Public Resources Code, to amend Section 95.31 of the Revenue and Taxation Code, to amend Sections 8320, 8322, 8323, and 8324 of the Streets and Highways Code, to amend Section 21101 of the Vehicle Code, and to amend Section 1 of Chapter 213 of the Statutes of 1907, relating to local and state agencies.

[Approved by Governor September 26, 1998. Filed with Secretary of State September 28, 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 Local Government Omnibus Act of 1998. The Legislature finds and declares that Californians desire their governments to be run efficiently and economically, and that public officials should avoid

waste and duplication whenever possible. The Legislature further finds and declares that it desires to reduce its own operating costs by reducing the number of separate bills affecting related topics. Therefore, in enacting this act, it is the intent of the Legislature to combine several minor, noncontroversial statutory changes relating to public agencies into a single measure.

SEC. 2. Section 1481 of the Government Code is amended to read:

1481. (a) When deemed expedient by the appointing power, a master official bond or other form of master bond may be used which shall provide coverage on more than one officer, employee, or agent who is required by the appointing power or the board of supervisors of a chartered or general law county to give bond.

(b) Notwithstanding any other provision of law, when deemed expedient by the legislative body of a local public agency, a master official bond or other form of master bond may be used which shall provide coverage on more than one officer, employee, or agent of the local public agency, whether elected or appointed, who is required by statute, regulation, the appointing power, the governing board of a local public agency, or the board of supervisors of a chartered or general law county to give bond.

(c) A master bond under this section shall be in the form and for the term which is approved by the appointing power or the legislative body of a local public agency, and shall inure to the benefit of the appointing power, state, or local public agency by whom the officer, employee, or agent is employed as well as the officer or officers under whom the employee or agent serves. If the master bond provides coverage on a public guardian or public administrator, then that master bond shall be for the joint benefit of the guardianship or administratorship estates, and the county to which the bond is issued.

(d) "Local public agency" means any city or county, whether general law or chartered, city and county, special district, school district, municipal corporation, political subdivision, joint powers authority or agency created pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1, or any board, commission, or agency thereof, or other local public agency, but shall not mean the state or any agency or department of the state.

(e) "Legislative body" means the board of supervisors of a county or city, or the governing board, by whatever name called, of a local public agency.

(f) In the case of the State of California, the form and content of the bond shall be subject to the approval of the Director of General Services.

SEC. 3. Section 5956.3 of the Government Code is amended to read:

5956.3. (a) For purposes of this chapter, "governmental agency" includes a city, county, city and county, including a chartered city or

county, school district, community college district, public district, county board of education, joint powers authority, transportation commission or authority, or any other public or municipal corporation.

(b) For purposes of this chapter, "private entity" includes a person, business entity, combination of persons and business entities, or a combination of business entities.

(c) For purposes of this chapter, "fee-producing infrastructure project" or "fee-producing infrastructure facility" means the operation of the infrastructure project or facility will be paid for by the persons or entities benefited by or utilizing the project or facility.

SEC. 4. Section 6505 of the Government Code is amended to read:

6505. (a) The agreement shall provide for strict accountability of all funds and report of all receipts and disbursements.

(b) In addition, and provided a separate agency or entity is created, the public officer performing the functions of auditor or controller as determined pursuant to Section 6505.5, shall either make or contract with a certified public accountant or public accountant to make an annual audit of the accounts and records of every agency or entity, except that the officer need not make or contract for the audit in any case where an annual audit of the accounts and records of the agency or entity by a certified public accountant or public accountant is otherwise made by any agency of the state or the United States only as to those accounts and records which are directly subject to such a federal or state audit. In each case the minimum requirements of the audit shall be those prescribed by the Controller for special districts under Section 26909 and shall conform to generally accepted auditing standards.

(c) When an audit of an account and records is made by a certified public accountant or public accountant, a report thereof shall be filed as public records with each of the contracting parties to the agreement and also with the county auditor of the county where the home office of the joint powers authority is located and shall be sent to any public agency or person in California that submits a written request to the joint powers authority. The report shall be filed within 12 months of the end of the fiscal year or years under examination.

(d) When a nonprofit corporation is designated by the agreement to administer or execute the agreement and no public officer is required to perform the functions of auditor or controller as determined pursuant to Section 6505.5, an audit of the accounts and records of the agreement shall be made at least once each year by a certified public accountant or public accountant, and a report thereof shall be filed as a public record with each of the contracting parties to the agreement and with the county auditor of the county where the home office of the joint powers authority is located, and shall be sent to any public agency or person in California that submits a written request to the joint powers authority. These reports shall

be filed within 12 months after the end of the fiscal year or years under examination.

(e) Any costs of the audit, including contracts with, or employment of certified public accountants or public accountants, in making an audit pursuant to this section shall be borne by the agency or entity and shall be a charge against any unencumbered funds of the agency or entity available for the purpose.

(f) All agencies or entities may, by unanimous request of the governing body thereof, replace the annual special audit with an audit covering a two-year period.

(g) Notwithstanding the foregoing provisions of this section to the contrary, agencies or entities shall be exempt from the requirement of an annual audit if the financial statements are audited by the Controller to satisfy federal audit requirements.

SEC. 5. Section 14670.15 of the Government Code is amended to read:

14670.15. Notwithstanding Section 14670, the Director of General Services, with the consent of the State Department of Mental Health, may lease to Napa County for a period not to exceed 60 years, 32,632 square feet, on the east of Residence 09, building 225, facing Imola Street between Shurleft and Tejas Street, within the boundaries of Napa State Hospital for establishment of an independent living facility for persons who are mentally ill, persons who are handicapped, or persons who have low income. The lease shall be under terms and conditions determined by the director to be in the best interests of the state.

SEC. 6. Section 17580 of the Government Code is repealed.

SEC. 7. Section 24352 of the Government Code is amended to read:

24352. Each officer authorized to receive fees pursuant to this title shall keep, in accordance with the guidelines of the Controller, a monthly record of all fees or compensation and fines of whatever nature, kind, or description, collected or chargeable. The record shall be open to public inspection during office hours.

SEC. 7.5. Section 25332 of the Government Code is amended to read:

25332. (a) The Boards of Supervisors of Butte, Kings, Los Angeles, Merced, Orange, Riverside, San Bernardino, Santa Clara, and Ventura Counties may enter into contracts with private enterprise to provide services that require special experience, education, and training that the county possesses. In addition, the Boards of Supervisors of Butte, Kings, Los Angeles, Merced, Orange, Riverside, San Bernardino, Santa Clara, and Ventura Counties may charge a fee for these optional services and enhanced services provided to the public that require special experience, education, training, or facilities that the county possesses.

These services shall be limited to the production and dissemination of training materials, leasing of training facilities, or provision of

training or consulting services resulting from the special or unique experiences derived from the magnitude, diversity, or distinctive nature of the county's services such as law enforcement, fire protection, public health care, welfare and public social programs, and public works projects, and the acquisition and management of real and personal property.

(b) Prior to entering into a contract pursuant to this section, the board of supervisors shall find, based on evidence in record, that the provision of the special service described in the proposed contract will not adversely impact the provision of similar services by private sector companies or individuals within the county.

(c) This section shall be operative on January 1, 1997.

SEC. 8. Section 25537 of the Government Code is amended to read:

25537. (a) In any county the board of supervisors may prescribe by ordinance a procedure alternative to that required by Sections 25526 to 25535, inclusive, for the leasing or licensing of any real property belonging to, leased by, or licensed by, the county. Any alternative procedure so prescribed shall require that the board of supervisors either accept the highest proposal for the proposed lease or license submitted in response to a call for bids posted in at least three public places for not less than 15 days and published for not less than two weeks in a newspaper of general circulation, if the newspaper is published in the county, or reject all bids.

(b) Leases or licenses of a duration not exceeding 10 years and having an estimated monthly rental of not exceeding five thousand dollars ($5,000) may be excluded from the bidding procedure specified in subdivision (a), except that notice shall be given pursuant to Section 6061, posted in the office of the county clerk, and if the lease or license involves residential property, notice shall be given to the housing sponsors, as defined by Sections 50074 and 50074.5 of the Health and Safety Code. The notice shall describe the property proposed to be leased or licensed, the terms of the lease or license, the location where offers to lease or license the property will be accepted, the location where leases or licenses will be executed, and any county officer authorized to execute the lease or license. If a lease or license is excluded from the bidding procedure, the actual monthly rental in the executed lease or license shall not exceed five thousand dollars ($5,000), the term of the executed lease or license shall not exceed 10 years, and the lease or license is not renewable. The board of supervisors may, by resolution, authorize the county officer or officers as are deemed appropriate, to execute leases or licenses pursuant to this section. The county officer authorized by the board of supervisors to execute licenses pursuant to this section shall provide a notice to the supervisorial district office in which the property proposed to be licensed is located at least five working days prior to execution of the license. The notice shall describe the property proposed to be licensed, the terms and conditions of the

license, and the name of the proposed licensee. If the supervisorial district office has not responded in writing objecting to the proposed license within five working days after the notice has been provided, the proposed license shall be deemed approved by the district office. If the supervisorial district office objects to the proposed license in writing within five working days, the license may be submitted for approval by the board of supervisors at a regular meeting.

(c) Notice pursuant to this section shall also be mailed or delivered at least 15 days prior to accepting offers to lease or license pursuant to this section to any person who has filed a written request for notice with either the clerk of the board or with any other person designated by the board to receive these requests. The county may charge a fee that is reasonably related to the costs of providing this service and the county may require each request to be annually renewed. The notice shall describe the property proposed to be leased or licensed, the terms of the lease or license, the location where offers to lease or license the property will be accepted, the location where leases or licenses will be executed, and any county officer authorized to execute the lease or license.

SEC. 9. Section 29065.5 of the Government Code is amended to read:

29065.5. At a date on or before August 10th an official designated by the board shall file with the clerk of the board a tabulation prepared in accordance with the board's direction.

When so filed, this tabulation shall constitute the proposed budget and shall be reproduced by the designated official so that each member of the general public may obtain one.

When this section is implemented, it shall be the responsibility of the official designated by the board to format the tabulation to the requirements of Sections 29005, 29006, 29007, and 29008, to concur with its use.

The alternative procedure prescribed by this section shall apply to a county only if the board adopts the procedure by resolution.

SEC. 10. Section 53750 of the Government Code is amended to read:

53750. For purposes of Article XIII C and Article XIII D of the California Constitution and this article:

(a) "Agency" means any local government as defined in subdivision (b) of Section 1 of Article XIII C of the California Constitution.

(b) "Assessment" means any levy or charge by an agency upon real property that is based upon the special benefit conferred upon the real property by a public improvement or service, that is imposed to pay the capital cost of the public improvement, the maintenance and operation expenses of the public improvement, or the cost of the service being provided. "Assessment" includes, but is not limited to, "special assessment," "benefit assessment," "maintenance assessment," and "special assessment tax."

(c) "District" means an area that is determined by an agency to contain all of the parcels that will receive a special benefit from a proposed public improvement or service.

(d) "Drainage system" means any system of public improvements that is intended to provide for erosion control, landslide abatement, or for other types of water drainage.

(e) "Extended," when applied to an existing tax or fee or charge, means a decision by an agency to extend the stated effective period for the tax or fee or charge, including, but not limited to, amendment or removal of a sunset provision or expiration date.

(f) "Flood control" means any system of public improvements that is intended to protect property from overflow by water.

(g) "Identified parcel" means a parcel of real property that an agency has identified as having a special benefit conferred upon it and upon which a proposed assessment is to be imposed, or a parcel of real property upon which a proposed property-related fee or charge is proposed to be imposed.

(h) (1) "Increased," when applied to a tax, assessment, or property-related fee or charge, means a decision by an agency that does either of the following:

(A) Increases any applicable rate used to calculate the tax, assessment, fee or charge.

(B) Revises the methodology by which the tax, assessment, fee or charge is calculated, if that revision results in an increased amount being levied on any person or parcel.

(2) A tax, fee, or charge is not deemed to be "increased" by an agency action that does either or both of the following:

(A) Adjusts the amount of a tax or fee or charge in accordance with a schedule of adjustments, including a clearly defined formula for inflation adjustment that was adopted by the agency prior to November 6, 1996.

(B) Implements or collects a previously approved tax, or fee or charge, so long as the rate is not increased beyond the level previously approved by the agency, and the methodology previously approved by the agency is not revised so as to result in an increase in the amount being levied on any person or parcel.

(3) A tax, assessment, fee or charge is not deemed to be "increased" in the case in which the actual payments from a person or property are higher than would have resulted when the agency approved the tax, assessment, or fee or charge, if those higher payments are attributable to events other than an increased rate or revised methodology, such as a change in the density, intensity, or nature of the use of land.

(i) "Notice by mail" means any notice required by Article XIII C or XIII D of the California Constitution that is accomplished through a mailing, postage prepaid, deposited in the United States Postal Service and is deemed given when so deposited. Notice by mail may be included in any other mailing to the record owner that otherwise

complies with Article XIII C or XIII D of the California Constitution and this article, including, but not limited to, the mailing of a bill for the collection of an assessment or a property-related fee or charge.

(j) "Record owner" means the owner of a parcel whose name and address appears on the last equalized secured property tax assessment roll, or in the case of any public entity, the State of California, or the United States, means the representative of that public entity at the address of that entity known to the agency.

(k) "Registered professional engineer" means an engineer registered pursuant to the Professional Engineers Act (Chapter 7 (commencing with Section 6700) of Division 3 of the Business and Professions Code).

(*l*) "Vector control" means any system of public improvements or services that is intended to provide for the surveillance and control of vectors as defined in subdivision (f) of Section 2200 of the Health and Safety Code and a pest as defined in Division 4 (commencing with Section 5001) and Division 5 (commencing with Section 9101) of the Food and Agricultural Code.

(m) "Water" means any system of public improvements intended to provide for the production, storage, supply, treatment, or distribution of water.

SEC. 11. Section 61601.25 of the Government Code, as amended by Chapter 56 of the Statutes of 1998, is amended to read:

61601.25. (a) In addition to the purposes authorized by this chapter, the Board of Directors of the Bear Valley Community Services District may, pursuant to Section 61601, exercise the following powers:

(1) Provide, maintain, operate, and contract for facilities and services for the control, removal, and eradication of local pine bark beetle infestations in accordance with any required plan or program approved by the Department of Forestry and Fire Protection to ensure consistency with the policies of the Board of Forestry.

(2) Acquire, construct, improve, or maintain mail receptacle facilities for mail delivery services to the district and its inhabitants.

(3) Adopt and enforce by ordinance measures for the abatement, control, and removal of weeds on property within the district.

(b) Notwithstanding Sections 61600 and 61601, whenever the board of directors determines, by resolution, that it is feasible, economically sound, and in the public interest for the district to exercise its power, the board may contract with the United States Postal Service for mail delivery services to the district and its inhabitants, including, but not limited to, leasing space to the United States Postal Service, a nonprofit corporation, or a private entity for mail delivery and packaging services.

(c) If the board does contract with the United States Postal Service to provide mail delivery services as provided in subdivision (b), the board shall submit a ballot measure to the voters of the district no later than November 3, 1998, for this purpose. If the voters reject the

measure, the board shall terminate the contract at the earliest reasonable time.

SEC. 11.1. Section 54954.5 of the Government Code is amended to read:

54954.5. For purposes of describing closed session items pursuant to Section 54954.2, the agenda may describe closed sessions as provided below. No legislative body or elected official shall be in violation of Section 54954.2 or 54956 if the closed session items were described in substantial compliance with this section. Substantial compliance is satisfied by including the information provided below, irrespective of its format.

(a) With respect to a closed session held pursuant to Section 54956.7:

LICENSE/PERMIT DETERMINATION

Applicant(s): (Specify number of applicants)

(b) With respect to every item of business to be discussed in closed session pursuant to Section 54956.8:

CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Property: (Specify street address, or if no street address, the parcel number or other unique reference, of the real property under negotiation)

Agency negotiator: (Specify names of negotiators attending the closed session) (If circumstances necessitate the absence of a specified negotiator, an agent or designee may participate in place of the absent negotiator so long as the name of the agent or designee is announced at an open session held prior to the closed session.)

Negotiating parties: (Specify name of party (not agent))

Under negotiation: (Specify whether instruction to negotiator will concern price, terms of payment, or both)

(c) With respect to every item of business to be discussed in closed session pursuant to Section 54956.9:

CONFERENCE WITH LEGAL COUNSEL—EXISTING LITIGATION

(Subdivision (a) of Section 54956.9)

Name of case: (Specify by reference to claimant's name, names of parties, case or claim numbers)

or

Case name unspecified: (Specify whether disclosure would jeopardize service of process or existing settlement negotiations)

CONFERENCE WITH LEGAL COUNSEL—ANTICIPATED LITIGATION

Significant exposure to litigation pursuant to subdivision (b) of Section 54956.9: (Specify number of potential cases)

(In addition to the information noticed above, the agency may be required to provide additional information on the agenda or in an oral statement prior to the closed session pursuant to subparagraphs (B) to (E), inclusive, of paragraph (3) of subdivision (b) of Section 54956.9.)

Initiation of litigation pursuant to subdivision (c) of Section 54956.9: (Specify number of potential cases)

(d) With respect to every item of business to be discussed in closed session pursuant to Section 54956.95:

LIABILITY CLAIMS

Claimant: (Specify name unless unspecified pursuant to Section 54961)

Agency claimed against: (Specify name)

(e) With respect to every item of business to be discussed in closed session pursuant to Section 54957:

THREAT TO PUBLIC SERVICES OR FACILITIES

Consultation with: (Specify name of law enforcement agency and title of officer)

PUBLIC EMPLOYEE APPOINTMENT

Title: (Specify description of position to be filled)

PUBLIC EMPLOYMENT

Title: (Specify description of position to be filled)

PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Title: (Specify position title of employee being reviewed)

PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE

(No additional information is required in connection with a closed session to consider discipline, dismissal, or release of a public employee. Discipline includes potential reduction of compensation.)

(f) With respect to every item of business to be discussed in closed session pursuant to Section 54957.6:

CONFERENCE WITH LABOR NEGOTIATORS

Agency designated representatives: (Specify names of designated representatives attending the closed session) (If circumstances necessitate the absence of a specified designated representative, an agent or designee may participate in place of the absent representative so long as the name of the agent or designee is announced at an open session held prior to the closed session.)

Employee organization: (Specify name of organization representing employee or employees in question)

or

Unrepresented employee: (Specify position title of unrepresented employee who is the subject of the negotiations)

(g) With respect to closed sessions called pursuant to Section 54957.8:

CASE REVIEW/PLANNING

(No additional information is required in connection with a closed session to consider case review or planning.)

(h) With respect to every item of business to be discussed in closed session pursuant to Sections 1461, 32106, and 32155 of the Health and Safety Code or Sections 37606 and 37624.3 of the Government Code:

REPORT INVOLVING TRADE SECRET

Discussion will concern: (Specify whether discussion will concern proposed new service, program, or facility)

Estimated date of public disclosure: (Specify month and year)

HEARINGS

Subject matter: (Specify whether testimony/deliberation will concern staff privileges, report of medical audit committee, or report of quality assurance committee)

(i) With respect to every item of business to be discussed in closed session pursuant to Section 54956.86:

CHARGE OR COMPLAINT INVOLVING INFORMATION PROTECTED BY FEDERAL LAW

(No additional information is required in connection with a closed session to discuss a charge or complaint pursuant to Section 54956.86.)

SEC. 11.2. Section 6831 of the Harbors and Navigation Code is repealed.

SEC. 11.3. Section 6835.1 is added to the Harbors and Navigation Code, to read:

6835.1. A person shall not be ineligible for appointment to the board because he or she is an elected official of an appointing authority to the board. The appointment of a person to the office of the board shall not be deemed incompatible with being an elected official of an appointing authority to the board.

SEC. 11.4. Section 6840 of the Harbors and Navigation Code is amended to read:

6840. The board shall select one of its members as chairperson and select one of its members as vice chairperson, who shall preside in the absence of the chairperson, and it may provide for and select the officers it deems necessary to conduct the affairs of the district.

SEC. 11.5. Section 6842 of the Harbors and Navigation Code is repealed.

SEC. 12. Section 39014.3 is added to the Health and Safety Code, to read:

39014.3. "Antelope Valley district" means the Antelope Valley Air Pollution Control District created pursuant to Section 40106.

SEC. 13. Section 39014.5 is added to the Health and Safety Code, to read:

39014.5. "Antelope Valley District Board" means the governing board of the Antelope Valley Air Pollution Control District created pursuant to Section 40106.

SEC. 14. Section 40002 of the Health and Safety Code is amended to read:

40002. (a) There is continued in existence and shall be, in every county, a county district, unless the entire county is included within the Antelope Valley district, the bay district, the Mojave Desert district, the south coast district, the San Joaquin Valley Air Quality Management District, if that district is created, a regional district, or a unified district.

(b) If only a part of the county is included within the Antelope Valley district, the bay district, the south coast district, the Mojave Desert district, the San Joaquin Valley Air Quality Management District, if that district is created, a regional district, or a unified district, there is in that part of the county not included within any of those districts a county district, for which different air quality rules and regulations may be required.

SEC. 15. Section 1600 of the Public Contract Code is amended to read:

1600. Notwithstanding any other provision of law, counties, a city and county, and state agencies may enter into and make payment on contracts by way of electronic transmission, including, but not limited to, the issuance of solicitation documents, and the receipt of responses thereto.

SEC. 16. Section 21061 of the Public Contract Code is amended to read:

21061. (a) All contracts for any improvement or unit of work, except as provided in this article, estimated to cost in excess of twenty-five thousand dollars ($25,000), shall be let to the lowest responsible bidder in the manner provided in this article.

(b) The board of supervisors of the district shall advertise by five or more insertions in a daily newspaper of general circulation, or by two or more insertions in a weekly newspaper of general circulation, printed and published in the district, inviting sealed proposals for the construction of the improvement or work. The board shall require the successful bidder or bidders to file with the board good and sufficient bonds, to be approved by the board, conditioned upon the faithful performance of the contract and upon the payment of all claims for labor and material, the bonds to contain the terms and conditions set forth in Chapter 7 (commencing with Section 3247) of Title 15 of Part 4 of Division 3 of the Civil Code and to be subject to that chapter.

(c) The board may also reject any bid not suitable to the best interests of the district. If all proposals are rejected or no proposals are received pursuant to advertisement therefor, or the work consists of channel protection, dam protection, temporary work, maintenance work, or of emergency work, the board of supervisors may, without advertising for bids, have the work done by force account. Emergency work may also be done by negotiated contract without advertising for bids or requiring bonds. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050).

(d) The board of supervisors, acting as the board of the district, may, by ordinance, resolution, or board order, authorize the flood control engineer or other county officer to order changes or additions in work being performed under a construction contract. When so authorized, any change or addition in the work shall be ordered in writing by the flood control engineer, or other designated officer, and the extra cost for any change or addition to the work so ordered shall not exceed five thousand dollars ($5,000) when the total amount of the original contract does not exceed fifty thousand dollars ($50,000), nor 10 percent of the amount of any original contract that exceeds fifty thousand dollars ($50,000), but does not exceed two hundred fifty thousand dollars ($250,000). For contracts whose original cost exceeds two hundred fifty thousand dollars ($250,000), the extra cost for any change or addition to the work so ordered shall not exceed twenty-five thousand dollars ($25,000), plus 5 percent of the amount of the original contract costs in excess of two hundred fifty thousand dollars ($250,000). In no event shall any such change or alteration exceed one hundred fifty thousand dollars ($150,000).

SEC. 17. Section 5540.5 of the Public Resources Code is amended to read:

5540.5. (a) Notwithstanding Section 5540, a district, with the approval by a unanimous vote of the members of its board of directors, may exchange any real property dedicated and used for park or open-space, or both, purposes for real property that the board of directors determines to be of equal value and is necessary to be acquired for park or open-space, or both, purposes.

(b) A district shall not in any calendar year exchange more than 10 acres of district-owned real property pursuant to this section for other real property, and any real property acquired by the district shall be adjacent to other real property owned by the district.

(c) Notwithstanding subdivision (b), the East Bay Regional Park District may exchange up to a maximum of 40 acres of district-owned real property in any calendar year pursuant to this section for other real property, and any real property so acquired by the district shall be adjacent to other real property owned by the district.

SEC. 18. Section 6217 of the Public Resources Code, as added by Section 3 of Chapter 293 of the Statutes of 1997, is amended to read:

6217. (a) With the exception of revenue derived from state school lands and from sources described in Sections 6217.6, 6301.5, 6301.6, 6855, and Sections 8551 to 8558, inclusive, and Section 6404 (insofar as the proceeds are from property that has been distributed or escheated to the state in connection with unclaimed estates of deceased persons), the commission shall deposit all revenue, money, and remittances received by the commission under this division, and under Chapter 138 of the Statutes of 1964, First Extraordinary Session, in the General Fund. Out of those funds deposited in the General Fund, sufficient moneys shall be made available each fiscal year for the following purposes:

(1) Payment of refunds, authorized by the commission, out of appropriations made for that purpose.

(2) Payment of expenditures of the commission as provided in the annual Budget Act.

(3) Payments to cities and counties of the amounts specified in Section 6817 for the purposes specified in that section, out of appropriations made for that purpose.

(4) Payments to cities and counties of the amounts agreed to pursuant to Section 6875, out of appropriations made for that purpose.

(b) This section shall become operative on July 1, 2003.

SEC. 19. 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.

(4) Notwithstanding paragraph (1), any county in which a new assessor is elected in 1998 may, upon the recommendation of the county assessor, and by resolution of the board of supervisors of the county adopted on or before January 31, 1999, elect to participate in

the State-County Property Tax Administration Loan Program commencing with the 1998–99 fiscal year.

(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. For any county in which a new assessor is elected in 1998, any loan agreement signed on or before January 31, 1999, shall be deemed a loan agreement for the 1998–99 fiscal year for the purposes of this section.

(2) If an eligible county elects to participate in the State-County Property Tax Administration Program, it shall enter into a contractual agreement with the Department of Finance. At a minimum, the contractual agreement shall include the following:

(A) The loan amount, as determined by the Director of Finance.

(B) Repayment provisions, including the interception of Motor Vehicle License Fee Account moneys apportioned pursuant to Section 11005 to repay the General Fund.

(C) A listing of the proposed use of the additional resources including, but not limited to:

(i) Proposed new positions.

(ii) Increased automation costs.

(D) An agreement to provide to the Department of Finance, by March 31 of the fiscal year in which the loan is made, a report projecting the impact of the increased funding in the current and subsequent fiscal year.

(3) Upon request of the Department of Finance, the Controller shall provide a loan to the following counties for up to the amount specified by the Director of Finance, not to exceed the following amounts:

Jurisdiction	Amount
Alameda	$ 2,152,429
Alpine	3,124
Amador	80,865
Butte	381,956
Calaveras	109,897
Colusa	53,957
Contra Costa	2,022,088

Del Norte	36,203
El Dorado	302,795
Fresno	1,165,249
Glenn	59,197
Humboldt	210,806
Imperial	231,673
Inyo	100,080
Kern	1,211,318
Kings	138,653
Lake	117,376
Lassen	54,699
Los Angeles	13,451,670
Madera	212,991
Marin	790,490
Mariposa	46,476
Mendocino	160,435
Merced	298,004
Modoc	24,022
Mono	47,778
Monterey	795,819
Napa	366,020
Nevada	234,292
Orange	6,826,325
Placer	628,047
Plumas	80,606
Riverside	2,358,068
Sacramento	1,554,245
San Benito	90,408
San Bernardino	2,139,938
San Diego	5,413,943
San Francisco	1,013,332
San Joaquin	818,686
San Luis Obispo	736,288
San Mateo	2,220,001
Santa Barbara	926,817
Santa Clara	4,213,639
Santa Cruz	565,328
Shasta	342,399
Sierra	7,383
Siskiyou	91,164

Solano	469,207
Sonoma	1,035,049
Stanislaus	866,155
Sutter	147,436
Tehama	97,222
Trinity	24,913
Tulare	501,907
Tuolumne	126,067
Ventura	1,477,789
Yolo	278,309
Yuba	88,968

(4) The Department of Finance shall consider any or all of the following items in determining the extent to which a county has satisfied the terms and repaid the loan, pursuant to the contract, as offered under this part:

(A) County performance as indicated by the State Board of Equalization's sample survey required pursuant to Section 15640 of the Government Code.

(B) Performance measures adopted by the California Assessors' Association.

(C) Reduction of backlog of assessment appeals and Proposition 8 declines in value.

(D) County compliance with mandatory audits required by Section 469.

(E) Reduction of backlogs in new construction, changes in ownership, and supplemental roll.

(F) Other measures, as determined by the Director of Finance.

(5) The Director of Finance shall notify the Controller of any participating county that fails to comply with the terms of the agreement, including the repayment of the loan. When the Controller receives notice from the Director of Finance, the Controller shall make an apportionment to the General Fund on behalf of the participating county in the amount of that required payment for the purpose of making that payment. The Controller shall make that payment only from moneys credited to the Motor Vehicle License Fee Account in the Transportation Tax Fund to which the participating county is entitled at that time under Chapter 5 (commencing with Section 11001) of Part 5 of Division 2, and shall thereupon reduce, by the amount of the payment, the subsequent allocation or allocations to which the county would otherwise be entitled under that chapter.

(c) (1) Funds appropriated for purposes of this section shall be used to enhance the property tax administration system by providing supplemental resources. Amounts provided to any county as a loan pursuant to this section shall not be used to supplant the current level

of funding. In order to participate in the State-County Property Tax Administration Program, a participating county shall maintain a base staffing, including contract staff, and total funding level in the county assessor's office, independent of the loan proceeds provided pursuant to this act, equal to the levels in the 1994–95 fiscal year exclusive of amounts provided to the assessor's office pursuant to Item 9100-102-001 of the Budget Act of 1994. However, in a county in which the 1994–95 funding level for the assessor's office was higher than the 1993–94 level, the 1993–94 fiscal year staffing and funding levels shall be considered the base year for purposes of this section. Commencing with the 1996–97 fiscal year, if a county was otherwise eligible but was unable to participate in this program in the 1995–96 fiscal year because it did not meet the funding level and staffing requirements of this paragraph, that county shall maintain a base staffing, including contract staff, and total funding level in the county assessor's office equal to the levels in the 1995–96 fiscal year.

(2) Prior to the assessor's recommendation for participation in the State-County Property Tax Administration Program, the assessor shall consult with the county tax collector, and any other county agency directly involved in property tax administration, to discuss the needs of the program for the duration of the contractual agreement.

(d) A participating county may establish a tracking system whereby a work or function number is assigned to each appraisal or administrative activity. That system should provide statistical data on the number of production units performed by each employee and the positive and negative change in assessed value attributable to the activities performed by each employee.

(e) Notwithstanding Section 95.3, no amount of funds provided to an eligible county pursuant to this section shall result in any deduction from those property tax administrative costs that are eligible for reimbursement pursuant to Section 95.3.

(f) At the request of the Department of Finance, the board shall assist the Department of Finance in evaluating contracts entered into pursuant to this section.

SEC. 20. Section 8320 of the Streets and Highways Code is amended to read:

8320. (a) The legislative body of a local agency may initiate a proceeding under this chapter in either of the following ways:

(1) On its own initiative, where the clerk of the legislative body shall administratively set a hearing by fixing the date, hour, and place of the hearing and cause the publishing and posting of the notices required by this chapter.

(2) Upon a petition or request of an interested person, at the discretion of the legislative body, except as provided in subdivision (e) of Section 8321, where the clerk of the legislative body shall administratively set a hearing by fixing the date, hour, and place of

the hearing and cause the publishing and posting of the notices required by this chapter.

(b) The notices required by this chapter shall contain both of the following:

(1) A description of the street, highway, or public service easement proposed to be vacated and a reference to a map or plan, that shows the portion or area to be vacated and includes a statement that the vacation proceeding is conducted under this chapter. In the case of a street or highway, the description shall include its general location, its lawful or official name or the name by which it is commonly known, and the extent to which it is to be vacated. In the case of a public service easement, the description shall identify it with common certainty. The map or plan showing the location of the street, highway, or public easement proposed to be vacated is sufficient compliance with this paragraph.

(2) The date, hour, and place for hearing all persons interested in the proposed vacation. The date shall not be less than 15 days after the initiation of proceedings.

SEC. 21. Section 8322 of the Streets and Highways Code is amended to read:

8322. (a) Except as provided in subdivisions (b) and (c), notice of the hearing on the proposed vacation shall be published for at least two successive weeks prior to the hearing in a daily, semiweekly, or weekly newspaper published and circulated in the local agency conducting the proceeding and which is selected by the legislative body for that purpose or by the clerk or other officer responsible for the publication where the legislative body has not selected any newspaper for that purpose.

(b) If the proceeding is conducted by a city and there is no daily, semiweekly, or weekly newspaper published and circulated in the city, the notice shall be published in some newspaper published in the county in which the city is located.

(c) Notice need not be published under this section where there is no daily, semiweekly, or weekly newspaper published and circulating in the county in which the local agency conducting the proceeding is located.

SEC. 22. Section 8323 of the Streets and Highways Code is amended to read:

8323. At least two weeks before the day set for the hearing, the legislative body shall post conspicuously notices of vacation along the line of the street, highway, or public service easement proposed to be vacated. The notices shall be posted not more than 300 feet apart, but at least three notices shall be posted. If the line of the street, highway, or public service easement proposed to be vacated exceeds one mile in length, the legislative body may, in lieu of posting not more than 300 feet apart, post notices at each intersection of another street or highway with the street, highway, or public service

easement to be vacated and at one point approximately midway between each intersection, but at least three notices shall be posted.

SEC. 23. Section 8324 of the Streets and Highways Code is amended to read:

8324. (a) At the hearing, the legislative body shall hear the evidence offered by persons interested.

(b) If the legislative body finds, from all the evidence submitted, that the street, highway, or public service easement described in the notice of hearing or petition is unnecessary for present or prospective public use, the legislative body may adopt a resolution vacating the street, highway, or public service easement. The resolution of vacation may provide that the vacation occurs only after conditions required by the legislative body have been satisfied and may instruct the clerk that the resolution of vacation not be recorded until the conditions have been satisfied.

SEC. 24. Section 21101 of the Vehicle Code is amended to read:

21101. Local authorities, for those highways under their jurisdiction, may adopt rules and regulations by ordinance or resolution on the following matters:

(a) Closing any highway to vehicular traffic when, in the opinion of the legislative body having jurisdiction, the highway is no longer needed for vehicular traffic.

(b) Designating any highway as a through highway and requiring that all vehicles observe official traffic control devices before entering or crossing the highway or designating any intersection as a stop intersection and requiring all vehicles to stop at one or more entrances to the intersection.

(c) Prohibiting the use of particular highways by certain vehicles, except as otherwise provided by the Public Utilities Commission pursuant to Article 2 (commencing with Section 1031) of Chapter 5 of Part 1 of Division 1 of the Public Utilities Code. No ordinance which is adopted pursuant to this subdivision after November 10, 1969, shall apply to any state highway which is included in the National System of Interstate and Defense Highways, except an ordinance which has been approved by the California Transportation Commission by a four-fifths vote.

(d) Closing particular streets during regular school hours for the purpose of conducting automobile driver training programs in the secondary schools and colleges of this state.

(e) Temporarily closing a portion of any street for celebrations, parades, local special events, and other purposes when, in the opinion of local authorities having jurisdiction or a public officer or employee that the local authority designates by resolution, the closing is necessary for the safety and protection of persons who are to use that portion of the street during the temporary closing.

(f) Prohibiting entry to, or exit from, or both, from any street by means of islands, curbs, traffic barriers, or other roadway design features to implement the circulation element of a general plan

adopted pursuant to Article 6 (commencing with Section 65350) of Chapter 3 of Division 1 of Title 7 of the Government Code. The rules and regulations authorized by this subdivision shall be consistent with the responsibility of local government to provide for the health and safety of its citizens.

SEC. 25. Section 1 of Chapter 213 of the Statutes of 1907, as amended by Chapter 191 of the Statutes of 1997, is amended to read:

Section 1. Reclamation District No. 800 is hereby created. The boundaries of the district are as follows:

Beginning at the intersection of the centerline of Dillard Road and the centerline of Wilton Road, said intersection also being within the southwest quarter of Section 6, Township 6 North, Range 7 East, M.D.B. & M.;

Thence southwesterly along the centerline of Dillard Road to its intersection with the centerline of Cosumnes Road;

Thence northerly along the centerline of Cosumnes Road to its intersection with the centerline of Freeman Road;

Thence westerly along the centerline of Freeman Road and the extension thereof to the centerline of the Cosumnes River as shown on Parcel Map of a Portion of Tract 94 of Rancho San Jon De Los Moquelumnes dated August 1977 and recorded in Book 34 of Parcel Maps, at Page 21, County of Sacramento;

Thence along the centerline of the Cosumnes River southwesterly to the intersection with the northeasterly line of the 147.82 acre parcel of I. Woodard, as shown on that certain plat of survey entitled "Woodard Property Located in Lots 7 and 8 of the Lower Daylor Estates," dated April 1940, recorded in the office of the Recorder, County of Sacramento, in Book 3 of Surveys, at Page 147;

Thence along the northeasterly line of said 147.82 acre parcel of I. Woodard, northwesterly to the most northerly corner of said 147.82 acre parcel of I. Woodard, in the centerline of Grant Line Road, as shown on said plat of survey, said 147.82 acre parcel of I. Woodard is currently owned by Wayne A. Bartholomew and Jacqueline A. Bartholomew, et al.;

Thence northeasterly along the centerline of Grant Line Road to its intersection with the centerline of Sloughhouse Road;

Thence southeasterly and northeasterly along the centerline of Sloughhouse Road to its intersection with centerline of State Route 16;

Thence easterly along the centerline of State Route 16 to its intersection with the centerline of Deer Creek;

Thence along the centerline of Deer Creek northerly and easterly to its intersection with the centerline of Kiefer Boulevard;

Thence southeasterly along the centerline of Kiefer Boulevard to its intersection with the centerline of State Route 16;

Thence easterly along the centerline of said State Route 16 to its intersection with the north-south centerline of Section 3, Township 7 North, Range 8 East, M.D.B. & M.;

Thence south along said north-south centerline of said Section 3 to the quarter section corner common to Section 3 and Section 10, Township 7 North, Range 8 East, M.D.B. & M.;

Thence continuing south along the north-south centerline of said Section 10 to the south quarter section corner of said Section 10;

Thence west along the south line of said Section 10 and continuing west along the south line of Sections 9, 8, and 7, Township 7 North, Range 8 East, M.D.B. & M., and the south line of Section 12, Township 7 North, Range 7 East, M.D.B. & M., to its intersection with the centerline of Meiss Road;

Thence northwesterly along the centerline of Meiss Road to its intersection with the centerline of Dillard Road;

Thence southwesterly along the centerline of Dillard Road to its intersection with the centerline of Wilton Road, said intersection also being the point of beginning;

Excepting therefrom Parcels 10, 11, and 14 as shown on Parcel Map of Rancho Murieta dated May 1973, recorded in Book 12 of Parcel Maps at Page 47, County of Sacramento.

SEC. 26. 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 877

An act to amend Sections 21644.5, 21670.4, 21681, 99155.1, 99238.5, and 99401.5 of the Public Utilities Code, to amend Section 8352.3 of the Revenue and Taxation Code, to amend Sections 73, 163, 164.11, 164.16, 164.17, 164.18, 253.1, 253.3, 302, 319, 336, 525, 887.4, 892.2, 892.4, 893, 893.6, 2106, 2551, 2553, and 2602 of, to add Section 407.1 to, and to repeal Sections 528 and 585 of, the Streets and Highways Code, and to amend Sections 1663, 11107, 11211, 11302, 11405, 11503, 11604, 11703, 11806, 11902, 12523.6, 12804.9, 13364, 13365, 13369, 13370, 13371, 14910, 21053, 21101, 21104, 22500, 27315, 34501.12, 34510, 34631.5, 35702, 35712, 35714, 36101, 40002.1, 40509, 40509.1, and 40509.5 of, to add Sections 2420.5, 11312, 11413, and 21201.3 to, to repeal and add Section 9250 of, and to repeal Sections 1656.5, 1660.5, 2420, 4000.5, and 9250.1 of, the Vehicle Code, relating to transportation.

[Approved by Governor September 26, 1998. Filed with Secretary of State September 28, 1998.]

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

SECTION 1. Section 21664.5 of the Public Utilities Code is amended to read:

21664.5. (a) An amended airport permit shall be required for every expansion of an existing airport. An applicant for an amended airport permit shall comply with each requirement of this article pertaining to permits for new airports. The department may by regulation provide for exemptions from the operation of this section pursuant to Section 21661, except that no exemption shall be made limiting the applicability of subdivision (e) of Section 21666, pertaining to environmental considerations, including the requirement for public hearings in connection therewith.

(b) As used in this section, "airport expansion" includes any of the following:

(1) The acquisition of runway protection zones, as defined in Federal Aviation Administration Advisory Circular 150/1500-13, or of any interest in land for the purpose of any other expansion as set forth in this section.

(2) The construction of a new runway.

(3) The extension or realignment of an existing runway.

(4) Any other expansion of the airport's physical facilities for the purpose of accomplishing or which are related to the purpose of paragraph (1), (2), or (3).

(c) This section does not apply to any expansion of an existing airport if the expansion commenced on or prior to the effective date of this section and the expansion met the approval, on or prior to that effective date, of each governmental agency that required the approval by law.

SEC. 2. Section 21670.4 of the Public Utilities Code is amended to read:

21670.4. (a) As used in this section, "intercounty airport" means any airport bisected by a county line through its runways, runway protection zones, inner safety zones, inner turning zones, outer safety zones, or sideline safety zones, as defined by the department's Airport Land Use Plan handbook and referenced in the comprehensive land use plan formulated under Section 21675.

(b) It is the purpose of this section to provide the opportunity to establish a separate airport land use commission so that an intercounty airport may be served by a single airport land use planning agency, rather than having to look separately to the airport land use commissions of the affected counties.

(c) In addition to the airport land use commissions created under Section 21670 or the alternatives established under Section 21670.1, for their respective counties, the boards of supervisors and city

selection committees for the affected counties, by independent majority vote of each county's two delegations, for any intercounty airport, may do either of the following:

(1) Establish a single separate airport land use commission for that airport. That commission shall consist of seven members to be selected as follows:

(A) One representing the cities in each of the counties, appointed by that county's city selection committee.

(B) One representing each of the counties, appointed by the board of supervisors of each county.

(C) One from each county having expertise in aviation, appointed by a selection committee comprised of the managers of all the public airports within that county.

(D) One representing the general public, appointed by the other six members of the commission.

(2) In accordance with subdivision (a) or (b) of Section 21670.1, designate an existing appropriate entity as that airport's land use commission.

SEC. 3. Section 21681 of the Public Utilities Code is amended to read:

21681. As used in this article, the following terms have the following meanings:

(a) "Own and operate" means that the public entity shall own the property in fee simple or by a long-term lease of a minimum of 20 years, unless otherwise approved by the department, and shall maintain dominion and control of the property, except that the public entity may provide by contract with a person for the operation and management of an airport otherwise meeting the requirements of this article. Operations of the airport shall be for, and on behalf of, the public entity. All leases to the public entity of property are required to be approved by the department. A lease of the property by the public entity to an agent or agency other than to a public entity does not meet the criteria for participation in airport assistance funds.

(b) "Matching funds" means money that is provided by the public entity and does not consist of funds previously received from state or federal agencies or public entity funds previously used to match federal or state funds. This definition shall be retroactive to July 1, 1967.

(c) "General aviation" means all aviation except air carrier and military aviation.

(d) "Public entity" means any city, county, airport district, airport authority, port district, port authority, public district, public authority, political subdivision, airport land use commission, community services district, or public corporation and the University of California.

(e) "Public agency" means the various agencies of the State of California and the federal government.

(f) "Airport and aviation purposes" means expenditures of a capital improvement nature, including the repair or replacement of a capital improvement, and expenditures for compatible land use planning in the area surrounding an airport, for any of the following purposes:

(1) Land acquisition for development and improvement of general aviation aircraft landing facilities.

(2) Grading and drainage necessary for the construction or reconstruction of runways or taxiways.

(3) Construction or reconstruction of runways or taxiways.

(4) Acquisition of "runway protection zones" as defined in Federal Aviation Administration Advisory Circular 150/1500-13.

(5) Acquisition of easements through, or other interests in, airspace as may be reasonably required for safeguarding aircraft operations in the vicinity of an aircraft landing facility.

(6) Removal of natural obstructions from runway protection zones.

(7) Installation of "segmented circle airport marker systems" as defined in current regulations of the Federal Aviation Administration.

(8) Installation of runway, taxiway, boundary, or obstruction lights, together with directly related electrical equipment.

(9) Installation of minimum security fencing around the perimeter of an aircraft landing facility.

(10) Grading and drainage necessary to provide for parking of transient general aviation aircraft.

(11) Construction or reconstruction of transient general aviation aircraft parking areas.

(12) Servicing of revenue or general obligation bonds issued to finance capital improvements for airport and aviation purposes.

(13) Air navigational facilities.

(14) Engineering and preliminary engineering related directly to a project funded under this article.

(15) Other capital improvements as may be designated in rules and regulations adopted by the department.

(16) Activities of an airport land use commission in connection with the preparation of a new or updated comprehensive land use plan pursuant to Section 21675. Expenditures that cannot be clearly identified as capital improvements shall be submitted to the department for consideration and approval.

(17) Airport master plans and airport layout plans.

(g) "Operation and maintenance" means expenditures for wages or salaries, utilities, service vehicles, and all other noncapital expenditures that are included in insurance, professional services, supplies, construction equipment, upkeep and landscaping, and other items of expenditure designated as "operation and maintenance" in rules and regulations adopted by the department.

(h) "Enplanement" means the boarding of an aircraft by a revenue passenger, including an original, stopover, or transfer boarding of the aircraft. For purposes of this subdivision, a stopover is a deliberate and intentional interruption of a journey by a passenger scheduled to exceed four hours in the case of an intrastate or interstate passenger or not to exceed 24 hours in the case of an international passenger at a point between the point of departure and the point of destination, and a transfer is an occurrence at an intermediate point in an itinerary whereby a passenger or shipment changes from a flight of one carrier to another flight either of the same or a different carrier with or without a stopover.

SEC. 4. Section 99155.1 of the Public Utilities Code is amended to read:

99155.1. (a) There shall be close coordination between local transit providers and county welfare departments in order to ensure that transportation moneys available for purposes of assisting recipients of aid under Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code are expended efficiently for the benefit of that population.

(1) In areas where public transit service is available, local transit providers shall give priority, in the use of funds allocated under the CalWORKs program and made available by the county, to the enhancement of public transportation services for welfare-to-work purposes.

(2) In areas where public transit services are unavailable, local transit providers shall give priority, in the use of funds allocated under the CalWORKs program and made available by the county, to the enhancement of transportation alternatives, such as, but not limited to, subsidies or vouchers, van pools, and contract paratransit operations, in order to promote welfare-to-work purposes.

(b) In areas where public transit service is available, local transit providers shall consider giving priority in the use of transit funds to the enhancement of public transportation services for welfare-to-work purposes.

SEC. 5. Section 99238.5 of the Public Utilities Code is amended to read:

99238.5. (a) The transportation planning agency shall ensure the establishment and implementation of a citizen participation process appropriate for each county, or counties if operating under a joint powers agreement, utilizing the social services transportation advisory council as a mechanism to solicit the input of transit dependent and transit disadvantaged persons, including the elderly, handicapped, and persons of limited means. The process shall include provisions for at least one public hearing in the jurisdiction represented by the social services transportation advisory council. Hearings shall be scheduled to ensure broad community participation and, if possible, the location of the hearings shall be rotated among the various communities within the advisory council's

jurisdiction. Notice of the hearing, including the date, place, and specific purpose of the hearing shall be given at least 30 days in advance through publication in a newspaper of general circulation. The transportation planning agency shall also send written notification to those persons and organizations which have indicated, through its citizen participation or any other source of information, an interest in the subject of the hearing.

(b) In addition to public hearings, the transportation planning agency shall consider other methods of obtaining public feedback on public transportation needs. Those methods may include, but are not limited to, teleconferencing, questionnaires, telecanvassing, and electronic mail.

SEC. 6. Section 99401.5 of the Public Utilities Code is amended to read:

99401.5. Prior to making any allocation not directly related to public transportation services, specialized transportation services, or facilities provided for the exclusive use of pedestrians and bicycles, the transportation planning agency shall annually do all of the following:

(a) Consult with the social services transportation advisory council established pursuant to Section 99238.

(b) Identify the transit needs of the jurisdiction which have been considered as part of the transportation planning process, including the following:

(1) An annual assessment of the size and location of identifiable groups likely to be transit dependent or transit disadvantaged, including, but not limited to, the elderly, the handicapped, including individuals eligible for paratransit and other special transportation services pursuant to Section 12143 of Title 42 of the United States Code (the federal Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101, et seq.)), and persons of limited means, including, but not limited to, recipients under the CalWORKs program.

(2) An analysis of the adequacy of existing public transportation services and specialized transportation services, including privately and publicly provided services necessary to implement the plan prepared pursuant to Section 12143 (c) (7) of Title 42 of the United States Code, in meeting the transit demand identified pursuant to paragraph (1).

(3) An analysis of the potential alternative public transportation and specialized transportation services and service improvements that would meet all or part of the transit demand.

(c) Identify the unmet transit needs of the jurisdiction and those needs that are reasonable to meet. The transportation planning agency shall hold at least one public hearing pursuant to Section 99238.5 for the purpose of soliciting comments on the unmet transit needs that may exist within the jurisdiction and that might be reasonable to meet by establishing or contracting for new public transportation or specialized transportation services or by expanding

existing services. The definition adopted by the transportation planning agency for the terms "unmet transit needs" and "reasonable to meet" shall be documented by resolution or in the minutes of the agency. The fact that an identified transit need cannot be fully met based on available resources shall not be the sole reason for finding that a transit need is not reasonable to meet. An agency's determination of needs that are reasonable to meet shall not be made by comparing unmet transit needs with the need for streets and roads.

(d) Adopt by resolution a finding for the jurisdiction, after consideration of all available information compiled pursuant to subdivisions (a), (b), and (c). The finding shall be that (1) there are no unmet transit needs, (2) there are no unmet transit needs that are reasonable to meet, or (3) there are unmet transit needs, including needs that are reasonable to meet. The resolution shall include information developed pursuant to subdivisions (a), (b), and (c) which provides the basis for the finding.

(e) If the transportation planning agency adopts a finding that there are unmet transit needs, including needs that are reasonable to meet, then the unmet transit needs shall be funded before any allocation is made for streets and roads within the jurisdiction.

SEC. 7. Section 8352.3 of the Revenue and Taxation Code is amended to read:

8352.3. Subject to Sections 8352 and 8352.1, all moneys deposited to the credit of the Motor Vehicle Fuel Account attributable to the distribution of motor vehicle fuel for use or used in propelling an aircraft in the state shall be transferred to the Aeronautics Account in the State Transportation Fund, for allocation as follows:

(a) To pay the refunds authorized by Section 8101.5.

(b) To pay the pro rata cost of the Controller and the board under subdivisions (b), (c), and (d) of Section 8352.1.

(c) To pay for the support of the Department of Transportation, for the administration of the State Aeronautics Act (Division 9 (commencing with Section 21001) of the Public Utilities Code).

(d) Remaining balance to be available for expenditures in accordance with Sections 21602, and 21682 to 21684, inclusive, of the Public Utilities Code.

SEC. 8. Section 73 of the Streets and Highways Code is amended to read:

73. The commission shall relinquish to any county or city any portion of any state highway within the county or city that has been deleted from the state highway system by legislative enactment, and the relinquishment shall become effective upon the first day of the next calendar or fiscal year, whichever first occurs after the effective date of the legislative enactment. It may likewise relinquish any portion of any state highway that has been superseded by relocation. Whenever the department and the county or city concerned have entered into an agreement providing therefor, or the legislative body

of the county or city has adopted a resolution consenting thereto, the commission may relinquish, to that county or city, any frontage or service road or outer highway, within the territorial limits of the county or city, which has a right-of-way of at least 40 feet in width and which has been constructed as a part of a state highway project, but does not constitute a part of the main traveled roadway thereof. The commission may also relinquish, to a county or city within whose territorial limits it is located, any nonmotorized transportation facility, as defined in Section 887, constructed as part of a state highway project if the county or city, as the case may be, has entered into an agreement providing therefor or its legislative body has adopted a resolution consenting thereto.

Relinquishment shall be by resolution. A certified copy of the resolution shall be filed with the board of supervisors or the city clerk, as the case may be. A certified copy of the resolution shall also be recorded in the office of the recorder of the county where the land is located and, upon its recordation, all right, title, and interest of the state in and to that portion of any state highway shall vest in the county or city, as the case may be, and that highway or portion thereof shall thereupon constitute a county road or city street, as the case may be.

The vesting of all right, title, and interest of the state in and to portions of any state highways heretofore relinquished by the commission, in the county or city to which it was relinquished, is hereby confirmed.

Prior to relinquishing any portion of a state highway to a county or a city, except where required by legislative enactment, the department shall give 90 days' notice in writing of intention to relinquish to the board of supervisors, or the city council, as the case may be. Where the resolution of relinquishment contains a recital as to the giving of the notice, adoption of the resolution of relinquishment shall be conclusive evidence that the notice has been given.

The commission shall not relinquish to any county or city any portion of any state highway that has been superseded by relocation until the department has placed the highway, as defined in Section 23, in a state of good repair. This requirement shall not obligate the department for widening, new construction, or major reconstruction, except as the commission may direct. A state of good repair requires maintenance, as defined in Section 27, including litter removal, weed control, and tree and shrub trimming to the time of relinquishment.

Within the 90-day period, the board of supervisors or the city council may protest in writing to the commission stating the reasons therefor, including, but not limited to, objections that the highway is not in a state of good repair, or is not needed for public use and should be vacated by the commission. In the event that the commission does not comply with the requests of the protesting body, it may proceed

with the relinquishment only after a public hearing given to the protesting body on 10 days' written notice.

SEC. 9. 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. 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 transportation account, congestion mitigation and air quality, regional surface transportation programs, local highway bridge replacement and rehabilitation, local seismic retrofit, local hazard elimination and safety, local federal demonstration projects, and local emergency relief.

(e) After deducting expenditures for administration, operation, maintenance, local assistance, safety, and rehabilitation pursuant to subdivisions (a), (b), (c), and (d), and for expenditures pursuant to Section 164.56, the remaining funds shall be available for capital improvement projects to be programmed in the state transportation improvement program.

SEC. 9.5. 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 transportation 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. 10. Section 164.11 of the Streets and Highways Code is amended to read:

164.11. For purposes of subdivision (e) of Section 164.3, the eligible interregional and intercounty routes include all of the following:

Route 12.

Route 14.

Route 15.

Route 16, between the east urban limits of Sacramento and Route 49.

Route 17, between the north urban limits of Santa Cruz and the south urban limits of San Jose.

Route 18, between the City of San Bernardino and the junction with Routes 18 and 138 in Los Angeles County.

Route 20.

Route 25, between Route 146 in San Benito County and Route 101 in Santa Clara County.

Route 28.

Route 29.

SEC. 11. Section 164.16 of the Streets and Highways Code is amended to read:

164.16. For purposes of subdivision (e) of Section 164.3, the eligible interregional and intercounty routes include all of the following:

Route 120, between Route 5 and Route 395.

Route 126, between the east urban limits of Oxnard-Ventura-Thousand Oaks and Route 5.

Route 127.

Route 128.

Route 129, between Route 1 and Route 101.

Route 132, west of Route 99.

Route 138, between Route 5 and Route 14 in Los Angeles County and between Route 14 in Los Angeles County and Route 18 near Crestline in San Bernardino County.

Route 139, between Route 299 and the Oregon state line.

SEC. 12. Section 164.17 of the Streets and Highways Code is amended to read:

164.17. For purposes of subdivision (e) of Section 164.3, the eligible interregional and intercounty routes include all of the following:

Route 140, between the east urban limits of Merced and Yosemite National Park.

Route 146.

Route 149.

Route 152, between Route 101 and Route 99.

Route 154.

Route 156, between Route 1 and Route 152.

SEC. 13. Section 164.18 of the Streets and Highways Code is amended to read:

164.18. For purposes of subdivision (e) of Section 164.3, the eligible interregional and intercounty routes include all of the following:

Route 160, between the north urban limits of Antioch-Pittsburg and the south urban limits of Sacramento.

Route 168, between the east urban limits of Fresno and Route 168 at Florence Lake Road, and between Route 168 near Lake Sabrina and Route 395.

Route 178, between the east urban limits of Bakersfield and Route 14.

Route 180, between the east urban limits of Fresno and Kings Canyon National Park.

Route 188.

Route 190, between Route 65 and Route 127.

Route 198, between Route 5 and the Sequoia National Park.

Route 199.

SEC. 14. Section 253.1 of the Streets and Highways Code is amended to read:

253.1. The California freeway and expressway system shall include:

Routes 5, 6, 7, 8, 10, 14, 15, 18, 24, 28, 30, 32, 34, 37, 40, 44, 47, 48, 50, 51, 52, 53, 54, 55, 56, 57, 59, 60, 61, 63, 65, 67, 68, 70, 71, 73, 74, 78, 80, 81, 83, 85, 87, 88, 89, 90, 93, 97, 100, 102, 103, 105, 107, 108, 118, 121, 122, 124, 125, 126, 134, 136, 139, 140, 145, 148, 149, 154, 156, 161, 163, 164, 179, 181, 183, 184, 199, 205, 210, 215, 217, 221, 223, 230, 232, 234, 235, 237, 238, 239, 241, 242, 247, 249, 251, 257, 258, 259, 261, 280, 330, 371, 380, 405, 505, 580, 605, 680, 710, 780, 805, 880, and 980 in their entirety.

SEC. 14.5. Section 253.1 of the Streets and Highways Code is amended to read:

253.1. The California freeway and expressway system shall include:

Routes 5, 6, 7, 8, 10, 14, 15, 18, 24, 28, 32, 34, 37, 40, 44, 47, 48, 50, 51, 52, 53, 54, 55, 56, 57, 59, 60, 61, 63, 65, 67, 68, 70, 71, 73, 74, 78, 80, 81, 83, 85, 87, 88, 89, 90, 93, 97, 100, 102, 103, 105, 107, 108, 118, 121, 122, 124, 125, 126, 134, 136, 139, 140, 145, 148, 149, 154, 156, 161, 163, 164, 179, 181, 183, 184, 199, 205, 210, 215, 217, 221, 223, 230, 232, 234, 235, 237, 238, 239, 241, 242, 247, 249, 251, 257, 258, 259, 261, 280, 330, 371, 380, 405, 505, 580, 605, 680, 710, 780, 805, 880, and 980 in their entirety.

SEC. 15. Section 253.3 of the Streets and Highways Code is amended to read:

253.3. The California freeway and expressway system shall also include:

Route 22 from:

(a) Studebaker Road in Long Beach to Route 405.

(b) Route 405 to Route 55 near Orange.

Route 23 from:

(a) Route 101 in Thousand Oaks to Route 118.

(b) Route 118 to Route 126 near Fillmore.

Route 25 from:

(a) Route 180 near Paicines to Route 156 in Hollister.

(b) Route 156 in Hollister to Route 101 near Gilroy.

Route 26 from Route 99 near Stockton to Route 12.

Route 29 from:

(a) Route 80 near Vallejo to Oak Knoll Avenue north of the City of Napa.

(b) The Napa-Lake county line to Route 20.

Route 33 from:

(a) Route 101 near Ventura to Route 150.

(b) Route 150 to Route 166 near Maricopa.

(c) Route 152 west of Los Banos to Route 5 near Santa Nella.

Route 35 from Route 280 to Route 1 near Daly City.

Route 36 from Route 5 at Red Bluff to Route 395.

Route 38 from Route 10 near Redlands to Route 18 near Baldwin Lake.

Route 39 from Route 5 to Route 210.

Route 41 from:

(a) Route 1 near Morro Bay to Route 101 near Atascadero.

(b) Route 46 to Route 99 near Fresno.

(c) Route 99 near Fresno to Route 180.

(d) Route 180 to Yosemite National Park.

Route 43 from Route 5 to Route 99 near Selma.

Route 45 from Route 20 near Colusa to Route 32 near Hamilton City.

SEC. 16. Section 302 of the Streets and Highways Code is amended to read:

302. Route 2 is from:

(a) The point where Santa Monica Boulevard crosses the city limits of the City of Santa Monica at Centinela Avenue to Route 101 in Los Angeles.

(b) Route 101 in Los Angeles to Route 210 in La Canada Flintridge via Glendale.

(c) Route 210 in La Canada Flintridge to Route 138 via Wrightwood.

(d) Upon a determination by the commission that it is in the best interests of the state to do so, the commission may, upon terms and conditions approved by it, relinquish that portion or portions of Route 2 located within the City of West Hollywood or the City of Santa Monica, or both, to that city or cities, upon agreement by the city or cities to accept the relinquishment or relinquishments. A relinquishment shall be effective on the date specified in the commission's approved terms and conditions with the respective city. Thereafter, Route 2 shall not include the portion or portions so relinquished, nor shall the portion or portions be considered for future adoption in accordance with Section 81. For portions of Route 2 that are so relinquished, the City of West Hollywood or the City of Santa Monica, or both, shall maintain within their respective jurisdictions signs directing motorists to the continuation of State Highway Route 2.

SEC. 17. Section 319 of the Streets and Highways Code is amended to read:

319. (a) Route 19 is from Route 1 near Long Beach to Route 164 near Pico Rivera.

(b) The portion of Route 19 that is between Del Amo Boulevard in the City of Long Beach and Route 1 in that city shall cease to be a state highway pursuant to the terms of a cooperative agreement between the City of Long Beach and the department providing for the relinquishment of that portion of the highway to that city.

SEC. 18. Section 336 of the Streets and Highways Code is amended to read:

336. Route 36 is from Route 101 near Alton to Route 395 near Johnsonville passing near Forest Glen via Red Bluff and Mineral, via the vicinity of Morgan Summit, and via Susanville.

SEC. 19. Section 407.1 is added to the Streets and Highways Code, to read:

407.1. Upon a determination by the commission that it is in the best interests of the state to do so, the commission may, upon terms

and conditions approved by it, relinquish a portion of Route 107 that is in the City of Lawndale to that city, if the city has agreed to accept it. The relinquishment shall be effective on the date immediately following the commission's approval of the terms and conditions.

SEC. 20. Section 525 of the Streets and Highways Code is amended to read:

525. Route 225 is from Route 101 near Santa Barbara to Route 101 near the Santa Barbara Central Business District.

SEC. 21. Section 528 of the Streets and Highways Code is repealed.

SEC. 22. Section 585 of the Streets and Highways Code is repealed.

SEC. 23. Section 887.4 of the Streets and Highways Code is amended to read:

887.4. Prior to December 31 of each year, the department shall prepare and submit an annual report to the Legislature summarizing programs it has undertaken for the development of nonmotorized transportation facilities, including a summary of major and minor projects. The report shall document all state funding for bicycle programs, including funds from the Bicycle Transportation Account, the Transportation Planning and Development Account, and the Clean Air Transportation Improvement Act. The report shall also summarize the existing directives received by the department from the Federal Highway Administration concerning the availability of federal funds for the programs, together with an estimate of the fiscal impact of the federal participation in the programs.

SEC. 24. Section 892.2 of the Streets and Highways Code is amended to read:

892.2. (a) The Bicycle Transportation Account is continued in existence in the State Transportation Fund, and, notwithstanding Section 13340 of the Government Code, the money in the account is continuously appropriated to the department for expenditure for the purposes specified in Section 892.4. Unexpended moneys shall be retained in the account for use in subsequent fiscal years.

(b) Any reference in law or regulation to the Bicycle Lane Account is a reference to the Bicycle Transportation Account.

SEC. 25. Section 892.4 of the Streets and Highways Code is amended to read:

892.4. The department shall allocate and disburse moneys from the Bicycle Transportation Account according to the following priorities:

(a) To the department, the amounts necessary to administer this article, not to exceed 1 percent of the funds expended per year.

(b) To counties and cities, for bikeways and related facilities, planning, safety and education, in accordance with Section 891.4.

SEC. 26. Section 893 of the Streets and Highways Code is amended to read:

893. The department shall disburse the money from the Bicycle Transportation Account pursuant to Section 891.4 for projects that improve the safety and convenience of bicycle commuters, including, but not limited to, any of the following:

(a) New bikeways serving major transportation corridors.

(b) New bikeways removing travel barriers to potential bicycle commuters.

(c) Secure bicycle parking at employment centers, park-and-ride lots, rail and transit terminals, and ferry docks and landings.

(d) Bicycle-carrying facilities on public transit vehicles.

(e) Installation of traffic control devices to improve the safety and efficiency of bicycle travel.

(f) Elimination of hazardous conditions on existing bikeways.

(g) Planning.

(h) Improvement and maintenance of bikeways.

In recommending projects to be funded, due consideration shall be given to the relative cost effectiveness of proposed projects.

SEC. 27. Section 893.6 of the Streets and Highways Code is amended to read:

893.6. The department shall make a reasonable effort to disburse funds in general proportion to population. However, no applicant shall receive more than 25 percent of the total amounts transferred to the Bicycle Transportation Account in a single fiscal year.

SEC. 28. Section 2106 of the Streets and Highways Code is amended to read:

2106. A sum equal to the net revenue derived from one and four one-hundredths cent ($0.0104) per gallon tax under the Motor Vehicle Fuel License Tax Law (Part 2 (commencing with Section 7301) of Division 2 of the Revenue and Taxation Code) shall be apportioned monthly from the Highway Users Tax Account in the Transportation Tax Fund among the counties and cities as provided in this section.

The amounts available under this section shall be apportioned, as follows:

(a) Four hundred dollars ($400) per month shall be apportioned to each city and city and county and eight hundred dollars ($800) per month shall be apportioned to each county and city and county.

(b) The following amounts shall be transferred to the Bicycle Transportation Account in the State Transportation Fund during the following calendar years:

(1) During 1998, one million dollars ($1,000,000).

(2) During 1999, one million dollars ($1,000,000).

(3) During 2000, one million dollars ($1,000,000).

(4) During 2001, two million dollars ($2,000,000).

(5) During 2002, two million dollars ($2,000,000).

(6) During 2003, three million dollars ($3,000,000).

(7) During 2004, and annually thereafter, five million dollars ($5,000,000).

(c) The balance shall be apportioned, as follows:

(1) A base sum shall be computed for each county by using the same proportions of fee-paid and exempt vehicles as are established for purposes of apportionment of funds under subdivision (d) of Section 2104.

(2) For each county, the percentage of the total assessed valuation of tangible property subject to local tax levies within the county which is represented by the assessed valuation of tangible property outside the incorporated cities of the county shall be applied to its base sum, and the resulting amount shall be apportioned to the county. The assessed valuation of taxable tangible property, for purposes of this computation, shall be that most recently used for countywide tax levies as reported to the Controller by the State Board of Equalization. If an incorporation or annexation is legally completed following the base sum computation, the new city's assessed valuation shall be deducted from the county's assessed valuation, the estimate of which may be provided by the State Board of Equalization.

(3) The difference between the base sum for each county and the amount apportioned to the county shall be apportioned to the cities of that county in the proportion that the population of each city bears to the total population of all the cities in the county. Populations used for determining apportionment of money under Section 2107 are to be used for purposes of this section.

SEC. 29. Section 2551 of the Streets and Highways Code is amended to read:

2551. (a) A service authority for freeway emergencies may be established in any county if the board of supervisors of the county and the city councils of a majority of the cities within the county having a majority of the population of cities within the county adopt resolutions providing for the establishment of the authority.

(b) The resolutions may designate the county transportation commission for the county, created pursuant to Division 12 (commencing with Section 130000) of the Public Utilities Code or council of governments formed pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code, as the service authority for freeway emergencies. The powers of a commission or council of governments so designated are limited to those of the service authority.

(c) The Metropolitan Transportation Commission may function as the service authority for freeway emergencies in any or all of the Counties of Santa Clara, San Mateo, Alameda, Contra Costa, Marin, Solano, Sonoma, Napa, and the City and County of San Francisco upon adoption of a resolution by the commission to act as a service authority and upon ratification of the commission's resolution in a particular county by the board of supervisors of the city and county or by the board of supervisors of the county and by the city councils

of the cities within the county having a majority of the population of the cities within the county.

(d) The Sacramento Area Council of Governments may function as the service authority for freeway emergencies in any or all of the Counties of Sacramento, Yolo, Yuba, Sutter, and San Joaquin, or any other county that is not already a member of the council, upon adoption of a resolution by the council to act as a service authority and upon ratification of the resolution in a particular county by the board of supervisors of the county and by the city councils of the cities within the county having a majority of the population of the cities within the county.

(e) As used in this chapter, "authority" and "service authority" mean a service authority for freeway emergencies created pursuant to this chapter.

SEC. 30. Section 2553 of the Streets and Highways Code is amended to read:

2553. An authority, other than the Metropolitan Transportation Commission or a county transportation commission or a council of governments designated pursuant to Section 2551, shall have seven members, with two members selected by the board of supervisors and five members selected jointly by the city councils of cities within the county.

If the Metropolitan Transportation Commission functions as a service authority, it shall consist of all the members of the commission as set forth in Section 66503 of the Government Code.

If the Sacramento Area Council of Governments functions as a service authority, it shall consist of (a) all of the members of the board of directors of the council, as set forth in the Joint Powers Agreement of the Sacramento Area Council of Governments, dated October 21, 1980, pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code, (b) one member representing San Joaquin County, (c) one member representing the cities of San Joaquin County, (d) one member representing any other county that is not already a member of the council, and (e) one member representing the cities within that county.

SEC. 31. Section 2602 of the Streets and Highways Code is amended to read:

2602. (a) The state-local transportation partnership program shall be implemented by the department and the applicants under the following procedures:

(1) Applicants shall submit applications for eligible projects to the department not later than June 30.

(2) The department shall review the applications for consistency with the requirements of this chapter and shall compile a preliminary list of all eligible projects not later than September 30 of the year in which the application was submitted.

(3) (A) If the total state share for eligible projects exceeds the amount specified in the Governor's proposed budget, the

department shall compute the preliminary pro rata share of state funds to be available so that each eligible project would receive the same ratio of state share to local share. Not later than April 1 of the following year, the department shall advise the applicants of the preliminary pro rata share of state funds to be available.

(B) Not later than June 15 of the following year, each applicant shall inform the department whether or not it can proceed with the project with the lower state share and meet the project development completion requirements specified in subparagraph (D) of paragraph (2) of subdivision (a) of Section 2601.

(C) Upon the enactment of the annual Budget Act, the department shall compile a new list of eligible projects consisting of those projects that were included in the original list that the applicant has indicated it can proceed with a lower state share and for which the applicant has indicated it can still meet the delivery requirements pursuant to subparagraph (D) of paragraph (2) of subdivision (a) of Section 2601.

(D) Based on the amount of the appropriation contained in the annual Budget Act, the department shall compute the final pro rata state share so that each project on the new list would receive the same ratio of state share to local share.

(E) Within 30 days of the enactment of the annual Budget Act, the department shall report to the Legislature on the projects being funded through this program and the ratio of state share to local share.

(4) The Legislature intends to appropriate two hundred fifty million dollars ($250,000,000) by June 30, 1990, two hundred fifty million dollars ($250,000,000) by June 30, 1991, and two hundred million dollars ($200,000,000) by June 30 of each year thereafter for this program.

(5) Construction contracts for projects on the eligibility list established pursuant to paragraph (2) or (3) shall be let not later than June 30 of the fiscal year for which funds are appropriated pursuant to paragraph (4).

(6) Beginning with projects funded through appropriations made by the Budget Act of 1992, applications shall not be accepted for any project within the boundaries of a project subject to, but for which contracts were not let in accordance with, paragraph (5), for a period of three fiscal years following the fiscal year in which the applicant's notification of intent to proceed under subparagraph (B) of paragraph (3) was submitted.

(7) The funds appropriated shall be expended not later than June 30 of the fourth year following the appropriation.

(8) Notwithstanding paragraphs (5) and (6), any project in Orange County for which a construction contract would otherwise have been required to be let by June 30, 1995, may be let until, but not later than, June 30, 1996.

(9) Notwithstanding paragraphs (5) and (6), any project in Santa Barbara County for which a construction contract would otherwise have been required to be let by June 30, 1995, may be let until, but not later than, December 31, 1996.

(10) The Lakeville Highway widening project (State Route 116 from Caulfield Lane to the Petaluma city limit), and the Mare Island Way/Wilson Avenue Cycle 6 improvement project in the City of Vallejo, for which a construction contract would otherwise have been required to be let by June 30, 1996, may be let until, but not later than, June 30, 1997.

(11) Notwithstanding paragraphs (5) and (6), any project in Siskiyou County for which a construction contract would otherwise have been required to be let by June 30, 1997, may be let until, but not later than, June 30, 1999.

(12) Notwithstanding paragraphs (5) and (6), any project in Santa Barbara County for which a construction contract would otherwise have been required to be let by June 30, 1998, may be let until, but not later than, June 30, 1999.

(13) Notwithstanding paragraphs (5) and (6), any project in the City of Santa Maria for which a construction contract would otherwise have been required to be let by June 30, 1998, may be let until, but not later than, June 30, 1999.

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

SEC. 32. Section 1656.5 of the Vehicle Code is repealed.

SEC. 33. Section 1660.5 of the Vehicle Code is repealed.

SEC. 34. Section 1663 of the Vehicle Code is amended to read:

1663. (a) The department shall, in the synopsis or summary of laws regulating the operation of vehicles and the use of the highways published under subdivision (b) of Section 1656, provide a warning which states that, in certain accidents, the lack of a shoulder harness may cause, or aggravate, serious and fatal injuries, especially to the head, spinal column, and abdominal organs.

(b) Nothing in this section limits or impairs the rights or remedies that are otherwise available to any person under existing law.

SEC. 35. Section 2420 of the Vehicle Code, as added by Section 11 of Chapter 945 of the Statutes of 1997, is repealed.

SEC. 36. Section 2420.5 is added to the Vehicle Code, to read:

2420.5. (a) The department may enter into a contract to conduct an inspection of vehicles that are subject to Section 500.100 of Title 29 of the Code of Federal Regulations and issue the vehicle inspection sticker authorized under subdivision (b) of that section to qualified vehicles.

(b) Any contract entered into under subdivision (a) shall provide that the amount to be paid to the department shall be equal to the costs incurred by the department for services provided under the contract.

SEC. 37. Section 4000.5 of the Vehicle Code is repealed.

SEC. 38. Section 9250 of the Vehicle Code is repealed.

SEC. 39. Section 9250 is added to the Vehicle Code, to read:

9250. (a) A registration fee of twenty-eight dollars ($28) shall be paid to the department for the registration of every vehicle or trailer coach of a type subject to registration under this code, except those vehicles that are expressly exempted under this code from the payment of registration fees.

(b) The registration fee imposed under this section applies to all vehicles described in Section 5004, whether or not special identification plates are issued to that vehicle.

(c) Trailer coaches are subject to the fee provided in subdivision (a) for each unit of the trailer coach.

(d) This section applies to (1) the initial or original registration, on or after November 1, 1997, of any vehicle not previously registered in this state, (2) the renewal of registration of any vehicle for which the registration period expires on or after November 1, 1997, regardless of whether a renewal application was mailed to the registered owner prior to November 1, 1997, and (3) any renewal of a registration which expired on or before October 31, 1997, but for which the fees are not paid until on or after November 1, 1997.

SEC. 40. Section 9250.1 of the Vehicle Code is repealed.

SEC. 42. Section 11107 of the Vehicle Code is amended to read:

11107. (a) The department may refuse to issue a license certificate under this chapter to any applicant to own or operate a school or to any instructor when it finds and determines any of the following to exist:

(1) The applicant has not met the qualifications required under this chapter.

(2) The applicant was previously the holder of a license under this chapter which was revoked or suspended, which was never reissued by the department after revocation, or which was never reinstated after suspension.

(3) The applicant was previously the holder of an occupational license issued by another state, authorizing the same or similar activities of a license issued under this division; and that license was revoked or suspended for cause and was never reissued, or was suspended for cause, and the terms of suspension have not been fulfilled.

(4) The applicant has done any act or series of acts which would be a cause for suspension or revocation under Section 11110.

(5) If the applicant is a business, a business representative was the holder of a revoked or suspended license previously issued under this chapter which was never reissued after revocation or which was never reinstated after suspension, or a business representative, though not previously the holder of a license, has done any act or series of acts which would be a cause for revocation or suspension under Section 11110.

(6) By reason of the facts and circumstances relating to the organization, control, and management of the business, it is likely that the policy or operation of the business will be directed, controlled, or managed by a business representative who, by reason of any act, series of acts, or conduct described in paragraph (4) or (5), would be ineligible for a license and that, by licensing the business, the purposes of this division would be defeated.

(7) The applicant has knowingly made a false statement or knowingly concealed a material fact in applying for a license.

(8) The applicant, or one of the business representatives if the applicant is a business, has been convicted of a crime, or has committed any act or engaged in conduct involving moral turpitude, which is substantially related to the qualifications, functions, or duties of the licensed activity. A conviction after a plea of nolo contendere is a conviction within the meaning of this section.

(b) Upon refusal of the department to issue a license, the applicant may demand, in writing, a hearing before the director or the director's representative within 60 days after notice of refusal.

The hearing shall be conducted pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(c) A person whose license has been revoked, or whose application for a license has been refused, may reapply for the license after a period of not less than one year has elapsed from the effective date of the decision revoking the license or refusing the application.

SEC. 43. Section 11211 of the Vehicle Code is amended to read:

11211. (a) The department may refuse to issue a license to any applicant under this chapter when it finds and determines that any of the following exist:

(1) The applicant was previously the holder of a license under this chapter which was revoked or suspended.

(2) The applicant was previously the holder of an occupational license issued by another state, authorizing the same or similar activities of a license issued under this division; and that license was revoked or suspended for cause and was never reissued, or was suspended for cause, and the terms of suspension have not been fulfilled.

(3) The applicant has done any act or series of acts which would be a cause for suspension or revocation of licensure under Section 11215, regardless of whether the applicant was licensed under this chapter at the time of the act or acts.

(4) If the applicant is a business, a business representative was the holder of a previously issued license under this chapter that was suspended or revoked or has done any act or series of acts which would be a cause for suspension or revocation of a license under Section 11215, regardless of whether the business representative was licensed under this chapter at the time of the act or acts.

(5) By reason of the facts and circumstances relating to the organization, control, and management of the business, it is likely that both of the following will occur:

(A) The policy or operation of the business will be directed, controlled, or managed by an individual who, by reason of an act, series of acts, or conduct described in paragraph (3) or (4), would be ineligible for a license.

(B) By licensing the business, the purposes of this division would be defeated.

(6) The applicant has knowingly made a false statement or knowingly concealed a material fact in applying for a license under this chapter.

(7) The applicant, or a business representative if the applicant is a business, has been convicted of a crime, or committed any act or engaged in conduct involving moral turpitude which is substantially related to the qualifications, functions, or duties of the licensed activity. A conviction after a plea of nolo contendere is a conviction within the meaning of this section.

(b) Upon refusal of the department to issue a license under this chapter, the applicant is entitled to a hearing upon demand in writing submitted to the department within 60 days after notice of refusal. The hearing shall be conducted pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(c) A person whose license has been revoked or application for a license has been refused may reapply for the license after a period of not less than one year has elapsed from the effective date of the decision revoking the license or refusing the application.

SEC. 44. Section 11302 of the Vehicle Code is amended to read:

11302. (a) The department may issue, or for reasonable cause shown, refuse to issue, a vehicle verifier's permit to any applicant, or may, after notice and hearing, suspend or revoke the permit when satisfied that the applicant or permittee:

(1) Has violated any of the provisions of this division or has committed any acts which are grounds for the refusal to issue, or the suspension or revocation of a permit or license issued under this division.

(2) Was previously the holder of an occupational license issued by another state, authorizing the same or similar activities of a license issued under this division; and that license was revoked or suspended for cause and was never reissued, or was suspended for cause, and the terms of suspension have not been fulfilled.

(3) Has purchased, sold, or otherwise acquired or disposed of, a vehicle which was stolen or embezzled or has performed or submitted to the department, or its authorized representative, documents purporting verification of a vehicle which was stolen or embezzled.

(4) Has, in the course of performing a vehicle verification, acted with negligence or incompetence in the reporting of erroneous information to the department, or its authorized representative, and has thereby caused the department to issue inaccurate certificates of ownership or registration, or any other documents or indices which it would not otherwise have issued.

(b) Every hearing as provided for in this chapter shall be pursuant to the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 45. Section 11312 is added to the Vehicle Code, to read:

11312. The suspension, expiration, or cancellation of a vehicle verifier's permit provided for in this chapter shall not prevent the filing of an accusation for the revocation or suspension of the suspended, expired, or canceled permit as provided in Section 11302 or 11305 or any rules or regulations adopted pursuant to Section 11308, and the department's decision that the permit should be suspended or revoked. That determination may be considered in granting or refusing to grant any subsequent license or permit authorized by this division to that vehicle verifier or to a business representative of that prior vehicle verifier's permit.

SEC. 46. Section 11405 of the Vehicle Code is amended to read:

11405. The department may refuse to issue a license to, or may suspend, revoke, or cancel the license of, a person to act as a registration service for any of the following reasons:

(a) The person has been convicted of a felony or a crime involving moral turpitude which is substantially related to the qualifications, functions, or duties of the licensed activity.

(b) The person is, or has been, the holder, or a managerial employee of the holder, of any occupational license issued by the department which has been suspended or revoked.

(c) The applicant was previously the holder of an occupational license issued by another state, authorizing the same or similar activities of a license issued under this division; and that license was revoked or suspended for cause and was never reissued, or was suspended for cause, and the terms of suspension have not been fulfilled.

(d) The person has used a false or fictitious name, knowingly made any false statement, or knowingly concealed any material fact, in the application for the license.

(e) The person has knowingly made, or acted with negligence or incompetence, or knowingly or negligently accepted or failed to inquire about any false, erroneous, or incorrect statement or information submitted to the registration service or the department in the course of the licensed activity.

(f) The person has knowingly or negligently permitted fraud, or willfully engaged in fraudulent practices, with reference to clients, vehicle registrants, members of the public, or the department in the course of the licensed activity.

(g) The person has knowingly or negligently committed or was responsible for any violation, cause for license refusal, or cause for discipline under Section 20 or Division 3 (commencing with Section 4000), Division 3.5 (commencing with Section 9840), Division 4 (commencing with Section 10500), or Division 5 (commencing with Section 11100), or any rules or regulations adopted under those provisions.

(h) The person has failed to obtain and maintain an established place of business in California.

(i) The person has failed to keep the business records required by Section 11406.

(j) The person has violated any term or condition of a restricted license to act as a registration service.

(k) The person has committed or was responsible for any other act, occurrence, or event in California or any foreign jurisdiction which would be cause to refuse to issue a license to, or to suspend, revoke, or cancel the license of, a person to act as a registration service.

SEC. 47. Section 11413 is added to the Vehicle Code, to read:

11413. The suspension, expiration, or cancellation of a registration service license provided for in this chapter shall not prevent the filing of an accusation for the revocation or suspension of the suspended, expired, or canceled license as provided in Section 11405 or 11408 or any related rules or regulations, and the department's decision that the license should be suspended or revoked. That determination may be considered in granting or refusing to grant any subsequent license authorized by this division to that licensee or to a business representative of that prior licensee.

SEC. 48. Section 11503 of the Vehicle Code is amended to read:

11503. The department may refuse to issue a license to an applicant when it determines any of the following:

(a) The applicant was previously the holder, or a managerial employee of the holder, of a license issued under this chapter which was revoked for cause and never reissued by the department, or which was suspended for cause and the terms of suspension have not been fulfilled.

(b) The applicant was previously a business representative whose license issued under this chapter was revoked for cause and never reissued or was suspended for cause and the terms of suspension have not been fulfilled.

(c) If the applicant is a business, a business representative was previously the holder of a license, or was a business representative of a business whose license, issued under this chapter was revoked for cause and never reissued or was suspended for cause and the terms of suspension have not been fulfilled; or, by reason of the facts and circumstances related to the organization, control, and management of the business, the operation of that business will be directed, controlled, or managed by individuals who, by reason of their

conviction of violations of this code, would be ineligible for a license and, by licensing that business, the purposes of this chapter would be defeated.

(d) The applicant, or a business representative if the applicant is a business, has been convicted of a crime or has committed any act or engaged in conduct involving moral turpitude which is substantially related to the qualifications, functions, or duties of the licensed activity. A conviction after a plea of nolo contendere is a conviction within the meaning of this section.

(e) The applicant was previously the holder of an occupational license issued by another state, authorizing the same or similar activities of a license issued under this division; and that license was revoked or suspended for cause and was never reissued, or was suspended for cause, and the terms of suspension have not been fulfilled.

(f) The information contained in an application is incorrect.

(g) A decision of the department to cancel, suspend, or revoke a license has been made, and the applicant was a business representative of the business regulated under that license.

SEC. 49. Section 11604 of the Vehicle Code is amended to read:

11604. The department may refuse to issue a lessor-retailer license when it makes any of the following determinations:

(a) The applicant has outstanding an unsatisfied final court judgment rendered in connection with an activity licensed under the authority of this division.

(b) The applicant was previously the holder, or a managerial employee of the holder, of a license issued under this division which was revoked for cause and never reissued by the department, or which was suspended for cause and the terms of suspension have not been fulfilled.

(c) The applicant was previously a business representative whose license issued under this division was revoked for cause and never reissued or was suspended for cause and the terms of suspension have not been fulfilled.

(d) If the applicant is a business, a business representative was previously the holder of a license, or was a business representative of a business whose license, issued under this division, was revoked for cause and never reissued or was suspended for cause and the terms of suspension have not been fulfilled; or, by reason of the facts and circumstances related to the organization, control, and management of the business, the operation of that business will be directed, controlled, or managed by individuals who, by reason of their conviction of violations of this code, would be ineligible for a license and, by licensing that business, the purposes of this chapter would be defeated.

(e) The applicant, or a business representative if the applicant is a business, has been convicted of a crime or committed any act or engaged in conduct involving moral turpitude which is substantially

related to the qualifications, functions, or duties of the licensed activity. A conviction after a plea of nolo contendere is a conviction within the meaning of this section.

(f) The applicant was previously the holder of an occupational license issued by another state, authorizing the same or similar activities of a license issued under this division; and that license was revoked or suspended for cause and was never reissued, or was suspended for cause, and the terms of suspension have not been fulfilled.

(g) The information contained in the application is incorrect.

(h) A decision of the department to cancel, suspend, or revoke a license has been made, and the applicant was a business representative of the business regulated under that license.

(i) The applicant does not have a principal place of business in California.

SEC. 50. Section 11703 of the Vehicle Code is amended to read:

11703. The department may refuse to issue a license to a manufacturer, manufacturer branch, remanufacturer, remanufacturer branch, distributor, distributor branch, transporter, or dealer, if it determines any of the following:

(a) The applicant was previously the holder, or a managerial employee of the holder, of a license issued under this chapter which was revoked for cause and never reissued by the department, or which was suspended for cause and the terms of suspension have not been fulfilled.

(b) The applicant was previously a business representative of a business whose license issued under this chapter was revoked for cause and never reissued or was suspended for cause and the terms of suspension have not been fulfilled.

(c) If the applicant is a business, a business representative of the business was previously the holder of a license, or was a business representative of a business whose license, issued under this chapter was revoked for cause and never reissued or was suspended for cause and the terms of suspension have not been fulfilled; or, by reason of the facts and circumstances related to the organization, control, and management of the business, the operation of that business will be directed, controlled, or managed by individuals who, by reason of their conviction of violations of the provisions of this code, would be ineligible for a license and, by licensing the business, the purposes of this chapter would be defeated.

(d) The applicant, or a business representative if the applicant is a business, has been convicted of a crime or committed any act or engaged in any conduct involving moral turpitude which is substantially related to the qualifications, functions, or duties of the licensed activity. A conviction after a plea of nolo contendere is a conviction within the meaning of this section.

(e) The applicant was previously the holder of an occupational license issued by another state, authorizing the same or similar

activities of a license issued under this division; and that license was revoked or suspended for cause and was never reissued, or was suspended for cause, and the terms of suspension have not been fulfilled.

(f) The information contained in the application is incorrect.

(g) Upon investigation, the business history required by Section 11704 contains incomplete or incorrect information, or reflects substantial business irregularities.

(h) A decision of the department to cancel, suspend, or revoke a license has been made and the applicant was a business representative of the business regulated under that license.

SEC. 51. Section 11806 of the Vehicle Code is amended to read:

11806. The department, after notice and hearing, may refuse to issue, or may suspend or revoke, a vehicle salesperson's license when it makes any of the following findings and determinations:

(a) The applicant or licensee has outstanding an unsatisfied final court judgment rendered in connection with an activity licensed under this division.

(b) The applicant or licensee has failed to pay funds or property received in the course of employment to a dealer entitled thereto.

(c) The applicant or licensee has failed to surrender possession of, or failed to return, any vehicle to a dealer lawfully entitled thereto upon termination of employment.

(d) A cause for refusal, suspension, or revocation exists under any provision of Sections 11302 to 11909, inclusive.

(e) The applicant was previously the holder of an occupational license issued by another state authorizing the same or similar activities of a license issued under this division; and that license was revoked or suspended for cause and was never reissued, or was suspended for cause, and the terms of suspension have not been fulfilled.

(f) The applicant or licensee has acted as a dealer by purchasing or selling vehicles while employed by a licensed dealer without reporting that fact to the dealer or without utilizing the report of sale documents issued to the dealer.

(g) The applicant or licensee has acted as a vehicle salesperson or engaged in that activity for, or on behalf of, more than one licensed dealer whose business does not have identical ownership and structure. Nothing in this section restricts the number of dealerships of which a person may be an owner, officer, or director, or precludes a vehicle salesperson from working at more than one location of one licensed dealer if the business of that dealer has identical ownership and structure.

(h) The applicant or licensee has acted as a vehicle salesperson without having first complied with Section 11812.

(i) The applicant or licensee was a managerial employee of a dealer during the time a person under the direction or control of the

managerial employee committed wrongful acts which resulted in the suspension or revocation of the dealer's license.

(j) The applicant or licensee has acted as a dealer by purchasing or selling any vehicle and using the license, report of sale books, purchase drafts, financial institution accounts, or other supplies of a dealer to facilitate that purchase or sale, when the applicant or licensee is not acting on behalf of that dealer.

SEC. 52. Section 11902 of the Vehicle Code is amended to read:

11902. (a) The department shall issue a representative's license when it finds and determines that the applicant has furnished the required information, and that the applicant intends in good faith to act as a representative and has paid the fees required by Sections 9262 and 11723.

(b) The department may refuse to issue, or may suspend or revoke, a license for any of the following reasons:

(1) The information in the application is incorrect.

(2) The applicant or licensee has been convicted of a crime or committed any act or engaged in any conduct involving moral turpitude which is substantially related to the qualifications, functions, or duties of the licensed activity. A conviction after a plea of nolo contendere is a conviction within the meaning of this section.

(3) The applicant or licensee has outstanding an unpaid final court judgment rendered in connection with an activity licensed under this chapter.

(4) The applicant or licensee was previously the holder of, or was a business representative of a business which was the holder of, a license and certificate issued under this chapter which were revoked for cause and not reissued by the department or which were suspended for cause and the terms of suspension have not been fulfilled.

(5) The applicant was previously the holder of an occupational license issued by another state, authorizing the same or similar activities of a license issued under this division; and that license was revoked or suspended for cause and was never reissued, or was suspended for cause, and the terms of suspension have not been fulfilled.

(6) The applicant or licensee has committed any act prohibited by Section 11713.2 or 11713.3.

(c) Pending the determination of the department that the applicant has met the requirements of this chapter, it may issue a temporary permit to any person applying for a representative's license. The temporary permit shall permit the operation by the representative for a period not to exceed 120 days while the department is completing its investigation and determination of all facts relative to the qualifications of the applicant for a license. The temporary permit is invalid after the applicant's license has been issued or refused.

(d) The department may issue a probationary representative's license based upon the existence of any circumstance set forth in subdivision (b), subject to conditions to be observed in the exercise of the privilege granted, either upon application for the issuance of a license or upon application for the renewal of a license. The conditions to be attached to the exercise of the privilege shall not appear on the face of the license but shall be those which, in the judgment of the department, are in the public interest and suitable to the qualifications of the applicant as disclosed by the application and investigation by the department of the information contained therein.

SEC. 53. 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 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 and a valid special driver certificate issued by the department.

(2) This subdivision only applies to a person who is employed by a business, a nonprofit organization, or a state or local public agency.

(b) The special driver certificate shall be issued only to an applicant who has cleared a criminal history background check by the Department of Justice and, if applicable, by the Federal Bureau of Investigation.

(1) In order to determine the applicant's suitability as the driver of a vehicle used for the transportation of persons with developmental disabilities, the Department of the California Highway Patrol shall require the applicant to furnish to that department, on a form provided or approved by that department for submission to the Department of Justice, a full set of fingerprints sufficient to enable a criminal background investigation.

(2) Except as provided in paragraph (3), an applicant shall furnish to the Department of the California Highway Patrol evidence of having resided in this state for seven consecutive years immediately prior to the date of application for the certificate.

(3) If an applicant is unable to furnish the evidence required under paragraph (2), the Department of the California Highway Patrol shall require the applicant to furnish an additional full set of fingerprints. That department shall submit those fingerprint cards to the Department of Justice. The Department of Justice shall, in turn, submit the additional full set of fingerprints required under this paragraph to the Federal Bureau of Investigation for a national criminal history record check.

(4) 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.

(5) The applicant shall pay, in addition to the fees authorized in Section 2427, a fee of twenty-five dollars ($25) for an original certificate and twelve dollars ($12) for the renewal of that certificate to the Department of the California Highway Patrol.

(c) A certificate issued under this section shall not be deemed a certification to operate a particular vehicle that otherwise requires a driver's license or endorsement for a particular class under this code.

(d) On or after March 1, 1998, no person who operates a business or a nonprofit organization or agency shall employ a person who is employed primarily as a driver of a motor vehicle for hire that is used for the transportation of persons with developmental disabilities unless the employed person operates the motor vehicle in compliance with subdivision (a).

(e) Nothing in this section precludes an employer of persons who are occasionally used as drivers of motor vehicles for the transportation of persons with developmental disabilities from requiring those persons, as a condition of employment, to obtain a special driver certificate pursuant to this section or precludes any volunteer driver from applying for a special driver certificate.

(f) As used in this section, a person is employed primarily as driver if that person performs at least 50 percent of his or her time worked including, but not limited to, time spent assisting persons onto and out of the vehicle, or at least 20 hours a week, whichever is less, as a compensated driver of a motor vehicle for hire for the transportation of persons with developmental disabilities.

(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. 54. Section 12804.9 of the Vehicle Code, as amended by Section 1 of Chapter 819 of the Statutes of 1996, is amended to read:

12804.9. (a) (1) The examination shall include all of the following:

(A) A test of the applicant's knowledge and understanding of the provisions of this code governing the operation of vehicles upon the highways.

(B) A test of the applicant's ability to read and understand simple English used in highway traffic and directional signs.

(C) A test of the applicant's understanding of traffic signs and signals, including the bikeway signs, markers, and traffic control devices established by the Department of Transportation.

(D) An actual demonstration of the applicant's ability to exercise ordinary and reasonable control in operating a motor vehicle by driving it under the supervision of an examining officer. The applicant shall submit to an examination appropriate to the type of motor vehicle or combination of vehicles he or she desires a license to drive, except that the department may waive the driving test part of the examination for any applicant who submits a license issued by another state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico if the department verifies through any acknowledged national driver record data source that there are no stops, holds, or other impediments to its issuance. The examining officer may request to see evidence of financial responsibility for the vehicle prior to supervising the demonstration of the applicant's ability to operate the vehicle. The examining officer may refuse to examine an applicant who is unable to provide proof of financial responsibility for the vehicle, unless proof of financial responsibility is not required by this code.

(E) A test of the hearing and eyesight of the applicant, and of other matters that may be necessary to determine the applicant's mental and physical fitness to operate a motor vehicle upon the highways, and whether any grounds exist for refusal of a license under this code.

(2) The examination for a class A or class B license under subdivision (b) shall also include a report of a medical examination of the applicant given not more than two years prior to the date of the application by a health care professional. As used in this subdivision, "health care professional" means a person who is licensed, certified, or registered in accordance with applicable state laws and regulations to practice medicine and perform physical examinations in the United States of America. Health care professionals are doctors of medicine, doctors of osteopathy, physician assistants, and advanced practice nurses, or doctors of chiropractic who are clinically competent to perform the medical examination presently required of motor carrier drivers by the Federal Highway Administration. The report shall be on a form approved by the department, the Federal Highway Administration, or the Federal Aviation Administration. In establishing the requirements, consideration may be given to the standards presently required of motor carrier drivers by the Federal Highway Administration.

(3) Any physical defect of the applicant, which, in the opinion of the department, is compensated for to ensure safe driving ability, shall not prevent the issuance of a license to the applicant.

(b) Beginning on January 1, 1989, in accordance with the following classifications, any applicant for a driver's license shall be required to submit to an examination appropriate to the type of motor vehicle or combination of vehicles the applicant desires a license to drive:

(1) Class A includes the following:

(A) Any combination of vehicles, if any vehicle being towed has a gross vehicle weight rating of more than 10,000 pounds.

(B) Any vehicle towing more than one vehicle.

(C) Any trailer bus.

(D) The operation of all vehicles under class B and class C.

(2) Class B includes the following:

(A) Any single vehicle with a gross vehicle weight rating of more than 26,000 pounds.

(B) Any single vehicle with three or more axles, except any three-axle vehicle weighing less than 6,000 pounds.

(C) Any bus except a trailer bus.

(D) Any farm labor vehicle.

(E) Any single vehicle with three or more axles or a gross vehicle weight rating of more than 26,000 pounds towing another vehicle with a gross vehicle weight rating of 10,000 pounds or less.

(F) The operation of all vehicles covered under class C.

(3) Class C includes the following:

(A) Any two-axle vehicle with a gross vehicle weight rating of 26,000 pounds or less, including when the vehicle is towing a trailer or semitrailer with a gross vehicle weight rating of 10,000 pounds or less.

(B) Notwithstanding subparagraph (A), any two-axle vehicle weighing 4,000 pounds or more unladen when towing a trailer coach not exceeding 9,000 pounds gross.

(C) Any housecar.

(D) Any three-axle vehicle weighing 6,000 pounds or less gross.

(E) Any housecar or vehicle towing another vehicle with a gross vehicle weight rating of 10,000 pounds or less, including when a tow dolly is used. No vehicle shall tow another vehicle in violation of Section 21715.

(F) (i) Any two-axle vehicle weighing 4,000 pounds or more unladen when towing either a trailer coach or a fifth-wheel travel trailer not exceeding 10,000 pounds gross vehicle weight rating, when the towing of the trailer is not for compensation.

(ii) Any two-axle vehicle weighing 4,000 pounds or more unladen when towing a fifth-wheel travel trailer exceeding 10,000 pounds, but not exceeding 15,000 pounds, gross vehicle weight rating, when the towing of the trailer is not for compensation, and if the person has passed a specialized written examination provided by the

department relating to the knowledge of this code and other safety aspects governing the towing of recreational vehicles upon the highway.

The authority to operate combinations of vehicles under this subparagraph shall be granted by endorsement on a class C license upon completion of that written examination.

(G) Any vehicle or combination of vehicles with a gross combination weight rating or a gross vehicle weight rating, as those terms are defined in subdivisions (g) and (h), respectively, of Section 15210, of 26,000 pounds or less, if all of the following conditions are met:

(i) Is operated by a farmer or an employee of a farmer.

(ii) Is used exclusively in the conduct of agricultural operations.

(iii) Is not used in the capacity of a for-hire carrier or for compensation.

(H) Any combination of vehicles with a gross combination weight rating, as defined in subdivision (g) of Section 15210, of 26,000 pounds or less when towing a boat trailer under the following conditions:

(i) The combination of vehicles is used to transport a boat for recreational purposes or to and from a place of repair.

(ii) The combination of vehicles is not used in the operations of a common or contract carrier or in the course of any business endeavor.

(iii) The towing of the trailer is not for compensation.

(iv) The combination of vehicles and its load are not of a size that requires a permit pursuant to Section 35780.

(I) Class C does not include any two-wheel motorcycle or any two-wheel motor-driven cycle.

(4) Class M1. Any two-wheel motorcycle or motor-driven cycle. Authority to operate vehicles included in a class M1 license may be granted by endorsement on a class A, B, or C license upon completion of an appropriate examination.

(5) Class M2. Any motorized bicycle or moped, or any bicycle with an attached motor, except a motorized bicycle described in subdivision (b) of Section 406. Authority to operate vehicles included in class M2 may be granted by endorsement on a class A, B, or C license upon completion of an appropriate examination. Persons holding a class M1 license or endorsement may operate vehicles included in class M2 without further examination.

(c) No driver's license or driver certificate shall be valid for operating any commercial motor vehicle, as defined in subdivision (b) of Section 15210, any other motor vehicle defined in paragraph (1) or (2) of subdivision (b), or any other vehicle requiring a driver to hold any driver certificate or any driver's license endorsement under Section 15275, unless a medical certificate approved by the department, the Federal Highway Administration, or the Federal Aviation Administration, that has been issued within two years of the date of the operation of that vehicle, is within the licensee's

immediate possession, and a copy of the medical examination report from which the certificate was issued is on file with the department. Otherwise, the license shall be valid only for operating class C vehicles that are not commercial vehicles, as defined in subdivision (b) of Section 15210, and for operating class M1 or M2 vehicles, if so endorsed, that are not commercial vehicles, as defined in subdivision (b) of Section 15210.

(d) A license or driver certificate issued prior to the enactment of Chapter 7 (commencing with Section 15200) shall be valid to operate the class or type of vehicles specified under the law in existence prior to that enactment until the license or certificate expires or is otherwise suspended, revoked, or canceled.

(e) The department may accept a certificate of driving skill that is issued by an employer, authorized by the department to issue a certificate under Section 15250, of the applicant, in lieu of a driving test, on class A or B applications, if the applicant has first qualified for a class C license and has met the other examination requirements for the license for which he or she is applying. The certificate may be submitted as evidence of the applicant's skill in the operation of the types of equipment covered by the license for which he or she is applying.

(f) The department may accept a certificate of competence in lieu of a driving test on class M1 or M2 applications, when the certificate is issued by a law enforcement agency for its officers who operate class M1 or M2 vehicles in their duties, if the applicant has met the other examination requirements for the license for which he or she is applying.

(g) The department may accept a certificate of satisfactory completion of a novice motorcyclist training program approved by the commissioner pursuant to Section 2932 in lieu of a driving test on class M1 or M2 applications, if the applicant has met the other examination requirements for the license for which he or she is applying. The department shall review and approve the written and driving test used by a program to determine whether the program may issue a certificate of completion.

(h) Notwithstanding subdivision (b), any person holding a valid California driver's license of any class may operate a short-term rental motorized bicycle without taking any special examination for the operation of a motorized bicycle, and without having a class M2 endorsement on that license. As used in this paragraph, "short-term" means 48 hours or less.

(i) No person under the age of 21 years shall be issued a class M1 or M2 license or endorsement unless he or she provides evidence satisfactory to the department of completion of a motorcycle safety training program that is operated pursuant to Article 2 (commencing with Section 2930) of Chapter 5 of Division 2.

(j) Drivers of vanpool vehicles may operate with class C licenses but shall possess evidence of a medical examination required for a

class B license when operating vanpool vehicles. In order to be eligible to drive the vanpool vehicle, the driver shall keep in the vanpool vehicle a statement, signed under penalty of perjury, that he or she has not been convicted of reckless driving, drunk driving, or a hit and run offense in the last five years.

(k) A class M license issued between January 1, 1989, and December 31, 1992, shall permit the holder to operate any motorcycle, motor-driven cycle, or motorized bicycle until the expiration of the license.

(*l*) 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. 54.5. Section 12804.9 of the Vehicle Code, as amended by Section 1 of Chapter 819 of the Statutes of 1996, is amended to read:

12804.9. (a) (1) The examination shall include all of the following:

(A) A test of the applicant's knowledge and understanding of the provisions of this code governing the operation of vehicles upon the highways.

(B) A test of the applicant's ability to read and understand simple English used in highway traffic and directional signs.

(C) A test of the applicant's understanding of traffic signs and signals, including the bikeway signs, markers, and traffic control devices established by the Department of Transportation.

(D) An actual demonstration of the applicant's ability to exercise ordinary and reasonable control in operating a motor vehicle by driving it under the supervision of an examining officer. The applicant shall submit to an examination appropriate to the type of motor vehicle or combination of vehicles he or she desires a license to drive, except that the department may waive the driving test part of the examination for any applicant who submits a license issued by another state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico if the department verifies through any acknowledged national driver record data source that there are no stops, holds, or other impediments to its issuance. The examining officer may request to see evidence of financial responsibility for the vehicle prior to supervising the demonstration of the applicant's ability to operate the vehicle. The examining officer may refuse to examine an applicant who is unable to provide proof of financial responsibility for the vehicle, unless proof of financial responsibility is not required by this code.

(E) A test of the hearing and eyesight of the applicant, and of other matters that may be necessary to determine the applicant's mental and physical fitness to operate a motor vehicle upon the highways, and whether any grounds exist for refusal of a license under this code.

(2) The examination for a class A or class B license under subdivision (b) shall also include a report of a medical examination

of the applicant given not more than two years prior to the date of the application by a health care professional. As used in this subdivision, "health care professional" means a person who is licensed, certified, or registered in accordance with applicable state laws and regulations to practice medicine and perform physical examinations in the United States of America. Health care professionals are doctors of medicine, doctors of osteopathy, physician assistants, and advanced practice nurses, or doctors of chiropractic who are clinically competent to perform the medical examination presently required of motor carrier drivers by the Federal Highway Administration. The report shall be on a form approved by the department, the Federal Highway Administration, or the Federal Aviation Administration. In establishing the requirements, consideration may be given to the standards presently required of motor carrier drivers by the Federal Highway Administration.

(3) Any physical defect of the applicant, which, in the opinion of the department, is compensated for to ensure safe driving ability, shall not prevent the issuance of a license to the applicant.

(b) Beginning on January 1, 1989, in accordance with the following classifications, any applicant for a driver's license shall be required to submit to an examination appropriate to the type of motor vehicle or combination of vehicles the applicant desires a license to drive:

(1) Class A includes the following:

(A) Any combination of vehicles, if any vehicle being towed has a gross vehicle weight rating of more than 10,000 pounds.

(B) Any vehicle towing more than one vehicle.

(C) Any trailer bus.

(D) The operation of all vehicles under class B and class C.

(2) Class B includes the following:

(A) Any single vehicle with a gross vehicle weight rating of more than 26,000 pounds.

(B) Any single vehicle with three or more axles, except any three-axle vehicle weighing less than 6,000 pounds.

(C) Any bus except a trailer bus.

(D) Any farm labor vehicle.

(E) Any single vehicle with three or more axles or a gross vehicle weight rating of more than 26,000 pounds towing another vehicle with a gross vehicle weight rating of 10,000 pounds or less.

(F) The operation of all vehicles covered under class C.

(3) Class C includes the following:

(A) Any two-axle vehicle with a gross vehicle weight rating of 26,000 pounds or less, including when the vehicle is towing a trailer or semitrailer with a gross vehicle weight rating of 10,000 pounds or less.

(B) Notwithstanding subparagraph (A), any two-axle vehicle weighing 4,000 pounds or more unladen when towing a trailer coach not exceeding 9,000 pounds gross.

(C) Any housecar.

(D) Any three-axle vehicle weighing 6,000 pounds or less gross.

(E) Any housecar or vehicle towing another vehicle with a gross vehicle weight rating of 10,000 pounds or less, including when a tow dolly is used. No vehicle shall tow another vehicle in violation of Section 21715.

(F) (i) Any two-axle vehicle weighing 4,000 pounds or more unladen when towing either a trailer coach or a fifth-wheel travel trailer not exceeding 10,000 pounds gross vehicle weight rating, when the towing of the trailer is not for compensation.

(ii) Any two-axle vehicle weighing 4,000 pounds or more unladen when towing a fifth-wheel travel trailer exceeding 10,000 pounds, but not exceeding 15,000 pounds, gross vehicle weight rating, when the towing of the trailer is not for compensation, and if the person has passed a specialized written examination provided by the department relating to the knowledge of this code and other safety aspects governing the towing of recreational vehicles upon the highway.

The authority to operate combinations of vehicles under this subparagraph shall be granted by endorsement on a class C license upon completion of that written examination.

(G) Any vehicle or combination of vehicles with a gross combination weight rating or a gross vehicle weight rating, as those terms are defined in subdivisions (g) and (h), respectively, of Section 15210, of 26,000 pounds or less, if all of the following conditions are met:

(i) Is operated by a farmer , an employee of a farmer, or an instructor credentialed in agriculture as part of an instructional program in agriculture at the high school, community college, or university level.

(ii) Is used exclusively in the conduct of agricultural operations.

(iii) Is not used in the capacity of a for-hire carrier or for compensation.

(H) Any combination of vehicles with a gross combination weight rating, as defined in subdivision (g) of Section 15210, of 26,000 pounds or less when towing a boat trailer under the following conditions:

(i) The combination of vehicles is used to transport a boat for recreational purposes or to and from a place of repair.

(ii) The combination of vehicles is not used in the operations of a common or contract carrier or in the course of any business endeavor.

(iii) The towing of the trailer is not for compensation.

(iv) The combination of vehicles and its load are not of a size that requires a permit pursuant to Section 35780.

(I) Class C does not include any two-wheel motorcycle or any two-wheel motor-driven cycle.

(4) Class M1. Any two-wheel motorcycle or motor-driven cycle. Authority to operate vehicles included in a class M1 license may be granted by endorsement on a class A, B, or C license upon completion of an appropriate examination.

(5) Class M2. Any motorized bicycle or moped, or any bicycle with an attached motor, except a motorized bicycle described in subdivision (b) of Section 406. Authority to operate vehicles included in class M2 may be granted by endorsement on a class A, B, or C license upon completion of an appropriate examination. Persons holding a class M1 license or endorsement may operate vehicles included in class M2 without further examination.

(c) No driver's license or driver certificate shall be valid for operating any commercial motor vehicle, as defined in subdivision (b) of Section 15210, any other motor vehicle defined in paragraph (1) or (2) of subdivision (b), or any other vehicle requiring a driver to hold any driver certificate or any driver's license endorsement under Section 15275, unless a medical certificate approved by the department, the Federal Highway Administration, or the Federal Aviation Administration, that has been issued within two years of the date of the operation of that vehicle, is within the licensee's immediate possession, and a copy of the medical examination report from which the certificate was issued is on file with the department. Otherwise, the license shall be valid only for operating class C vehicles that are not commercial vehicles, as defined in subdivision (b) of Section 15210, and for operating class M1 or M2 vehicles, if so endorsed, that are not commercial vehicles, as defined in subdivision (b) of Section 15210.

(d) A license or driver certificate issued prior to the enactment of Chapter 7 (commencing with Section 15200) shall be valid to operate the class or type of vehicles specified under the law in existence prior to that enactment until the license or certificate expires or is otherwise suspended, revoked, or canceled.

(e) The department may accept a certificate of driving skill that is issued by an employer, authorized by the department to issue a certificate under Section 15250, of the applicant, in lieu of a driving test, on class A or B applications, if the applicant has first qualified for a class C license and has met the other examination requirements for the license for which he or she is applying. The certificate may be submitted as evidence of the applicant's skill in the operation of the types of equipment covered by the license for which he or she is applying.

(f) The department may accept a certificate of competence in lieu of a driving test on class M1 or M2 applications, when the certificate is issued by a law enforcement agency for its officers who operate class M1 or M2 vehicles in their duties, if the applicant has met the

other examination requirements for the license for which he or she is applying.

(g) The department may accept a certificate of satisfactory completion of a novice motorcyclist training program approved by the commissioner pursuant to Section 2932 in lieu of a driving test on class M1 or M2 applications, if the applicant has met the other examination requirements for the license for which he or she is applying. The department shall review and approve the written and driving test used by a program to determine whether the program may issue a certificate of completion.

(h) Notwithstanding subdivision (b), any person holding a valid California driver's license of any class may operate a short-term rental motorized bicycle without taking any special examination for the operation of a motorized bicycle, and without having a class M2 endorsement on that license. As used in this paragraph, "short-term" means 48 hours or less.

(i) No person under the age of 21 years shall be issued a class M1 or M2 license or endorsement unless he or she provides evidence satisfactory to the department of completion of a motorcycle safety training program that is operated pursuant to Article 2 (commencing with Section 2930) of Chapter 5 of Division 2.

(j) Drivers of vanpool vehicles may operate with class C licenses but shall possess evidence of a medical examination required for a class B license when operating vanpool vehicles. In order to be eligible to drive the vanpool vehicle, the driver shall keep in the vanpool vehicle a statement, signed under penalty of perjury, that he or she has not been convicted of reckless driving, drunk driving, or a hit-and-run offense in the last five years.

(k) A class M license issued between January 1, 1989, and December 31, 1992, shall permit the holder to operate any motorcycle, motor-driven cycle, or motorized bicycle until the expiration of the license.

(*l*) 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. 55. Section 12804.9 of the Vehicle Code, as added by Section 2 of Chapter 819 of the Statutes of 1996, is amended to read:

12804.9. (a) (1) The examination shall include all of the following:

(A) A test of the applicant's knowledge and understanding of the provisions of this code governing the operation of vehicles upon the highways.

(B) A test of the applicant's ability to read and understand simple English used in highway traffic and directional signs.

(C) A test of the applicant's understanding of traffic signs and signals, including the bikeway signs, markers, and traffic control devices established by the Department of Transportation.

(D) An actual demonstration of the applicant's ability to exercise ordinary and reasonable control in operating a motor vehicle by driving it under the supervision of an examining officer. The applicant shall submit to an examination appropriate to the type of motor vehicle or combination of vehicles he or she desires a license to drive, except that the department may waive the driving test part of the examination for any applicant who submits a license issued by another state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico if the department verifies through an acknowledged national driver record data source that there are no stops, holds, or other impediments to its issuance. The examining officer may request to see evidence of financial responsibility for the vehicle prior to supervising the demonstration of the applicant's ability to operate the vehicle. The examining officer may refuse to examine an applicant who is unable to provide proof of financial responsibility for the vehicle, unless proof of financial responsibility is not required by this code.

(E) A test of the hearing and eyesight of the applicant, and of other matters that may be necessary to determine the applicant's mental and physical fitness to operate a motor vehicle upon the highways, and whether any ground exists for refusal of a license under this code.

(2) The examination for a class A or class B license under subdivision (b) shall also include a report of a medical examination of the applicant given not more than two years prior to the date of the application by a health care professional. As used in this subdivision, "health care professional" means a person who is licensed, certified, or registered in accordance with applicable state laws and regulations to practice medicine and perform physical examinations in the United States of America. Health care professionals are doctors of medicine, doctors of osteopathy, physician assistants, and advanced practice nurses, or doctors of chiropractic who are clinically competent to perform the medical examination presently required of motor carrier drivers by the Federal Highway Administration. The report shall be on a form approved by the department, the Federal Highway Administration, or the Federal Aviation Administration. In establishing the requirements, consideration may be given to the standards presently required of motor carrier drivers by the Federal Highway Administration.

(3) Any physical defect of the applicant, which, in the opinion of the department, is compensated for to ensure safe driving ability, shall not prevent the issuance of a license to the applicant.

(b) Beginning on January 1, 1989, in accordance with the following classifications, any applicant for a driver's license shall be required to submit to an examination appropriate to the type of motor vehicle or combination of vehicles the applicant desires a license to drive:

(1) Class A includes the following:

(A) Any combination of vehicles, if any vehicle being towed has a gross vehicle weight rating of more than 10,000 pounds.

(B) Any vehicle towing more than one vehicle.

(C) Any trailer bus.

(D) The operation of all vehicles under class B and class C.

(2) Class B includes the following:

(A) Any single vehicle with a gross vehicle weight rating of more than 26,000 pounds.

(B) Any single vehicle with three or more axles, except any three-axle vehicle weighing less than 6,000 pounds.

(C) Any bus except a trailer bus.

(D) Any farm labor vehicle.

(E) Any single vehicle with three or more axles or a gross vehicle weight rating of more than 26,000 pounds towing another vehicle with a gross vehicle weight rating of 10,000 pounds or less.

(F) The operation of all vehicles covered under class C.

(3) Class C includes the following:

(A) Any two-axle vehicle with a gross vehicle weight rating of 26,000 pounds or less, including when the vehicle is towing a trailer or semitrailer with a gross vehicle weight rating of 10,000 pounds or less.

(B) Notwithstanding subparagraph (A), any two-axle vehicle weighing 4,000 pounds or more unladen when towing a trailer coach not exceeding 9,000 pounds gross.

(C) Any housecar.

(D) Any three-axle vehicle weighing 6,000 pounds or less gross.

(E) Any housecar or vehicle towing another vehicle with a gross vehicle weight rating of 10,000 pounds or less, including when a tow dolly is used. No vehicle shall tow another vehicle in violation of Section 21715.

(F) (i) Any two-axle vehicle weighing 4,000 pounds or more unladen when towing either a trailer coach or a fifth-wheel travel trailer not exceeding 10,000 pounds gross vehicle weight rating, when the towing of the trailer is not for compensation.

(ii) Any two-axle vehicle weighing 4,000 pounds or more unladen when towing a fifth-wheel travel trailer exceeding 10,000 pounds, but not exceeding 15,000 pounds, gross vehicle weight rating, when the towing of the trailer is not for compensation, and if the person has passed a specialized written examination provided by the department relating to the knowledge of this code and other safety aspects governing the towing of recreational vehicles upon the highway. The authority to operate combinations of vehicles under this subparagraph shall be granted by endorsement on a class C license upon completion of that written examination.

(G) Class C does not include any two-wheel motorcycle or any two-wheel motor-driven cycle.

(4) Class M1. Any two-wheel motorcycle or motor-driven cycle. Authority to operate vehicles included in a class M1 license may be granted by endorsement on a class A, B, or C license upon completion of an appropriate examination.

(5) Class M2. Any motorized bicycle or moped, or any bicycle with an attached motor, except a motorized bicycle described in subdivision (b) of Section 406. Authority to operate vehicles included in class M2 may be granted by endorsement on a class A, B, or C license upon completion of an appropriate examination. Persons holding a class M1 license or endorsement may operate vehicles included in class M2 without further examination.

(c) No driver's license or driver certificate shall be valid for operating any commercial motor vehicle, as defined in subdivision (b) of Section 15210, any other motor vehicle defined in paragraph (1) or (2) of subdivision (b), or any other vehicle requiring a driver to hold any driver certificate or any driver's license endorsement under Section 15275, unless a medical certificate approved by the department, the Federal Highway Administration, or the Federal Aviation Administration, that has been issued within two years of the date of the operation of that vehicle, is within the licensee's immediate possession, and a copy of the medical examination report from which the certificate was issued is on file with the department. Otherwise the license shall be valid only for operating class C vehicles that are not commercial vehicles, as defined in subdivision (b) of Section 15210, and for operating class M1 or M2 vehicles, if so endorsed, that are not commercial vehicles, as defined in subdivision (b) of Section 15210.

(d) A license or driver certificate issued prior to the enactment of Chapter 7 (commencing with Section 15200) shall be valid to operate the class or type of vehicles specified under the law in existence prior to that enactment until the license or certificate expires or is otherwise suspended, revoked, or canceled.

(e) The department may accept a certificate of driving skill that is issued by an employer, authorized by the department to issue a certificate under Section 15250, of the applicant, in lieu of a driving test, on class A or B applications, if the applicant has first qualified for a class C license and has met the other examination requirements for the license for which he or she is applying. The certificate may be submitted as evidence of the applicant's skill in the operation of the types of equipment covered by the license for which he or she is applying.

(f) The department may accept a certificate of competence in lieu of a driving test on class M1 or M2 applications, when the certificate is issued by a law enforcement agency for its officers who operate class M1 or M2 vehicles in their duties, if the applicant has met the other examination requirements for the license for which he or she is applying.

(g) The department may accept a certificate of satisfactory completion of a novice motorcyclist training program approved by the commissioner pursuant to Section 2932 in lieu of a driving test on class M1 or M2 applications, if the applicant has met the other examination requirements for the license for which he or she is applying. The department shall review and approve the written and driving test used by a program to determine whether the program may issue a certificate of completion.

(h) Notwithstanding subdivision (b), any person holding a valid California driver's license of any class may operate a short-term rental motorized bicycle without taking any special examination for the operation of a motorized bicycle, and without having a class M2 endorsement on that license. As used in this paragraph, "short-term" means 48 hours or less.

(i) No person under the age of 21 years shall be issued a class M1 or M2 license or endorsement unless he or she provides evidence satisfactory to the department of completion of a motorcycle safety training program that is operated pursuant to Article 2 (commencing with Section 2930) of Chapter 5 of Division 2.

(j) Drivers of vanpool vehicles may operate with class C licenses but shall possess evidence of a medical examination required for a class B license when operating vanpool vehicles. In order to be eligible to drive the vanpool vehicle, the driver shall keep in the vanpool vehicle a statement, signed under penalty of perjury, that he or she has not been convicted of reckless driving, drunk driving, or a hit and run offense in the last five years.

(k) A class M license issued between January 1, 1989, and December 31, 1992, shall permit the holder to operate any motorcycle, motor-driven cycle, or motorized bicycle until the expiration of the license.

(*l*) This section shall become operative on January 1, 2001.

SEC. 56. Section 13364 of the Vehicle Code is amended to read:

13364. (a) Notwithstanding any other provision of this code, a person's privilege to operate a motor vehicle shall be suspended upon notification by a bank or financial institution that a check has been dishonored when that check was presented to the department for either of the following reasons:

(1) In payment of a fine that resulted from an outstanding violation pursuant to Section 40508 or a suspension pursuant to Section 13365.

(2) In payment of a fee or penalty owed by the person, if the fee or penalty is required by this code for the issuance, reissuance, or return of the person's driver's license after suspension, revocation, or restriction of the driving privilege.

(b) The suspension shall remain in effect until payment of all fines, fees, and penalties is made to the department or to the court, as appropriate, and the person's driving record does not contain any notification of a court order issued pursuant to subdivision (a) of

Section 42003 or of a violation of subdivision (a) or (b) of Section 40508.

(c) No suspension imposed pursuant to this section shall become effective until 30 days after the mailing of a written notice of the intent to suspend.

(d) The written notice of a suspension imposed pursuant to this section shall be delivered by certified mail.

(e) If any personal check is offered in payment of fines described in paragraph (1) of subdivision (a) and is returned for any reason, the related notice issued pursuant to Section 40509 or 40509.5 shall be restored to the person's record.

(f) Notwithstanding any other provision of law, any license that has been suspended pursuant to this section shall immediately be reinstated, and the fees and penalties waived, upon the submission of proof acceptable to the department that the check has been erroneously dishonored by the bank or financial institution.

SEC. 57. Section 13365 of the Vehicle Code is amended to read:

13365. (a) Upon receipt of notification of a violation of subdivision (a) or (b) of Section 40508, the department shall take the following action:

(1) If the notice is given pursuant to subdivision (a) or (b) of Section 40509, if the driving record of the person who is the subject of the notice contains one or more prior notifications of a violation issued pursuant to Section 40509 or 40509.5, and if the person's driving privilege is not currently suspended under this section, the department shall suspend the driving privilege of the person.

(2) If the notice is given pursuant to subdivision (a) or (b) of Section 40509.5, and if the driving privilege of the person who is the subject of the notice is not currently suspended under this section, the department shall suspend the driving privilege of the person.

(b) A suspension under this section shall not be effective before a date 60 days after the date of receipt, by the department, of the notice given specified in subdivision (a), and the notice of suspension shall not be mailed by the department before a date 30 days after receipt of the notice given specified in subdivision (a).

The suspension shall continue until the suspended person's driving record does not contain any notification of a violation of subdivision (a) or (b) of Section 40508.

SEC. 58. Section 13369 of the Vehicle Code is amended to read:

13369. This section applies to the following endorsements and certificates: passenger transport vehicle, hazardous materials, schoolbus, school pupil activity bus, youth bus, general public paratransit vehicle, farm labor vehicle, and vehicle used for the transportation of developmentally disabled persons.

(a) The department shall refuse to issue or renew, or shall revoke for any of the following causes, the certificate or endorsement of any person who:

(1) Within the preceding three years, has committed any violation which results in a conviction assigned a violation point count of two or more, as defined in Section 12810 and 12810.5. The department shall not refuse to issue or renew, nor shall it revoke a person's hazardous materials or passenger transportation vehicle endorsement if the violation leading to the conviction occurred in the person's private vehicle and not in a commercial motor vehicle, as defined in Section 15210.

(2) Within the preceding three years, has had his or her driving privilege suspended, revoked, or on probation for any reason involving unsafe operation of a motor vehicle. The department shall not refuse to issue or renew, nor shall it revoke, a person's hazardous materials or passenger transportation vehicle endorsement if the person's driving privilege has, within the preceding three years, been placed on probation only for any reason involving unsafe operation of a motor vehicle, or if Section 13353.6 applies.

(b) The department may refuse to issue or renew, or may suspend or revoke the certificate or endorsement of any person who:

(1) Within the preceding 12 months, has been involved as a driver in three accidents in which the driver caused or contributed to the causes of the accidents.

(2) Within the preceding 24 months, as a driver, caused or contributed to the cause of an accident resulting in a fatality or serious injury or serious property damage in excess of five hundred dollars ($500).

(3) Has violated any provision of this code, or any rule or regulation pertaining to the safe operation of a vehicle for which the certificate or endorsement was issued.

(4) Has violated any restriction of the certificate, endorsement, or commercial driver's license.

(5) Has knowingly made a false statement or concealed a material fact on an application for a certificate or endorsement.

(6) Has been determined by the department to be a negligent or incompetent operator.

(7) Has demonstrated irrational behavior to the extent that a reasonable and prudent person would have reasonable cause to believe that the applicant's ability to perform the duties of a driver may be impaired.

(8) Excessively or habitually uses, or is addicted to, alcoholic beverages, narcotics, or dangerous drugs.

(9) Does not meet the minimum medical standards established or approved by the department.

(c) The department may cancel the certificate or endorsement of any driver who:

(1) Does not have a valid license of the appropriate class.

(2) Has requested cancellation of the certificate or endorsement.

(3) Has failed to meet any of the requirements for issuance or retention of the certificate or endorsement, including, but not

limited to, payment of the proper fee, submission of an acceptable medical report and fingerprint cards, and failure to meet prescribed training requirements.

(4) Has had his or her driving privilege suspended or revoked for a cause involving other than the safe operation of a motor vehicle.

(d) With regard to a violation, accident, or departmental action which occurred prior to January 1, 1991, subdivision (a) and paragraphs (1), (2), and (3) of subdivision (b) do not apply to a driver holding a valid passenger transport or hazardous materials endorsement, or a valid class 1 or class 2 license who is applying to convert that license to a class A or class B license with a passenger transport or hazardous materials endorsement, if the driver submits proof that he or she is currently employed operating vehicles requiring the endorsement, or a valid class 3 license who is applying for a class C license with a hazardous materials endorsement if the driver submits proof that he or she is currently employed operating vehicles requiring the endorsement.

(e) Subdivision (d) does not apply to drivers applying for a schoolbus, school pupil activity bus, youth bus, general public paratransit vehicle, or farm labor vehicle certificate.

(f) (1) Reapplication following denial or revocation under subdivision (a) or (b) may be made after a period of not less than one year from the effective date of denial or revocation, except in cases where a longer period of suspension or revocation is required by law.

(2) Reapplication following cancellation under subdivision (d) may be made any time without prejudice.

SEC. 59. Section 13370 of the Vehicle Code is amended to read:

13370. (a) The department shall deny or revoke a schoolbus, school pupil activity bus, general public paratransit vehicle, youth bus driver certificate, or a certificate for a vehicle used for the transportation of developmentally disabled persons if any of the following causes apply to the applicant or certificate holder:

(1) Has been convicted of any sex offense as defined in Section 44010 of the Education Code.

(2) Has been convicted, within the two years preceding the application date, of any offense specified in Section 11361.5 of the Health and Safety Code.

(3) Has failed to meet prescribed testing or training requirements for certificate issuance.

(b) The department may deny, suspend, or revoke a schoolbus, school pupil activity bus, general public paratransit vehicle, or youth bus driver certificate, or a certificate for a vehicle used for the transportation of developmentally disabled persons if any of the following causes apply to the applicant or certificate holder:

(1) Has been convicted of any crime specified in Section 44424 of the Education Code within the seven years preceding the application date. This paragraph does not apply if denial is mandatory.

(2) Has committed any act involving moral turpitude.

(3) Has been convicted of any offense, not specified in this section and other than a sex offense, that is punishable as a felony, within the seven years preceding the application date.

(4) Has been dismissed as a driver for a cause relating to pupil transportation safety.

(5) Has been convicted, within the seven years preceding the application date, of any offense relating to the use, sale, possession, or transportation of narcotics, habit-forming drugs, or dangerous drugs, except as provided in paragraph (3) of subdivision (a).

(c) (1) Reapplication following denial or revocation under subdivision (a) or (b) may be made after a period of not less than one year from the effective date of denial or revocation.

(2) An applicant or holder of a certificate may reapply for a certificate whenever a felony or misdemeanor conviction is reversed or dismissed. A termination of probation and dismissal of charges pursuant to Section 1203.4 of the Penal Code or a dismissal of charges pursuant to Section 1203.4a of the Penal Code is not a dismissal for purposes of this section.

SEC. 59.5. Section 13370 of the Vehicle Code is amended to read:

13370. (a) The department shall deny or revoke a schoolbus, school pupil activity bus, general public paratransit vehicle, youth bus driver certificate, or a certificate for a vehicle used for the transportation of developmentally disabled persons if any of the following causes apply to the applicant or certificate holder:

(1) Has been convicted of any sex offense as defined in Section 44010 of the Education Code.

(2) Has been convicted, within the two years preceding the application date, of any offense specified in Section 11361.5 of the Health and Safety Code.

(3) Has failed to meet prescribed testing or training requirements for certificate issuance.

(4) (A) Has been convicted of any violent felony listed in subdivision (c) of Section 667.5 of the Penal Code or any serious felony listed in subdivision (c) of Section 1192.7 of the Penal Code.

(B) Subparagraph (A) does not apply to the holder of a valid schoolbus, school pupil activity bus, general public paratransit vehicle, or youth bus driver certificate unless the holder is convicted of a violent felony listed in subdivision (c) of Section 667.5 of the Penal Code or a serious felony listed in subdivision (c) of Section 1192.7 of the Penal Code after the effective date of the act that added this subparagraph.

(b) The department may deny, suspend, or revoke a schoolbus, school pupil activity bus, general public paratransit vehicle, or youth bus driver certificate, or a certificate for a vehicle used for the transportation of developmentally disabled persons if any of the following causes apply to the applicant or certificate holder:

(1) Has been convicted of any crime specified in Section 44424 of the Education Code, within seven years preceding the application date. This paragraph does not apply if denial is mandatory.

(2) Has committed any act involving moral turpitude.

(3) Has been convicted of any offense, not specified in this section and other than a sex offense, that is punishable as a felony, within the seven years preceding the application date.

(4) Has been dismissed as a driver for a cause relating to pupil transportation safety.

(5) Has been convicted, within the seven years preceding the application date, of any offense relating to the use, sale, possession, or transportation of narcotics, habit-forming drugs, or dangerous drugs, except as provided in paragraph (3) of subdivision (a).

(c) (1) Reapplication following denial or revocation under subdivision (a) or (b) may be made after a period of not less than one year from the effective date of denial or revocation.

(2) An applicant or holder of a certificate may reapply for a certificate whenever a felony or misdemeanor conviction is reversed or dismissed. A termination of probation and dismissal of charges pursuant to Section 1203.4 of the Penal Code or a dismissal of charges pursuant to Section 1203.4a of the Penal Code is not a dismissal for purposes of this section.

SEC. 60. Section 13371 of the Vehicle Code is amended to read:

13371. This section applies to schoolbus, school pupil activity bus, youth bus, general public paratransit vehicle certificates, and a certificate for a vehicle used for the transportation of developmentally disabled persons.

(a) Any driver or applicant who has received a notice of denial, suspension, or revocation, may, within 15 days of the mailing date, submit to the department a written request for a hearing. Failure to demand a hearing within 15 days is a waiver of the right to a hearing.

(1) Upon receipt by the department of the hearing request, the department may stay the action until a hearing is conducted and the final decision has been rendered by the Certificate Action Review Board pursuant to paragraph (2) of subdivision (d). The department shall not stay an action when there is reasonable cause to believe the stay would pose a significant risk to the safety of pupils being transported in a schoolbus, school pupil activity bus, youth bus, or persons being transported in a general public paratransit vehicle.

(2) An applicant or driver is not entitled to a hearing whenever the action by the department is made mandatory by this article or any other applicable law or regulation except where the cause for denial is based on failure to meet medical standards or excessive and habitual use of or addiction to alcoholic beverages, narcotics, or dangerous drugs.

(b) The department shall appoint a hearing officer to conduct the hearing in accordance with Section 14112. After the hearing, the

hearing officer shall prepare and submit findings and recommendations to the department.

(c) The department shall mail, as specified in Section 22, a copy of the hearing officer's findings and recommendations to the driver or applicant and to the driver or applicant's hearing representative, either of whom may file a statement of exception to the findings and recommendations within 24 days after the mailing date.

(d) (1) The Certificate Action Review Board consists of the following three members: a chairperson appointed by the director of the department, a member appointed by the Commissioner of the California Highway Patrol, and a member appointed by the Superintendent of Public Instruction.

(2) After a hearing, the board shall review the findings and recommendations of the hearing officer, and any statement of exception, and make a decision concerning disposition of the action taken by the department, which decision shall be final. At this stage, no evidence shall be heard that was not presented at the hearing, unless the person wishing to present the new evidence establishes, to the satisfaction of the board, that it could not have been obtained with due diligence prior to the hearing.

SEC. 61. Section 14910 of the Vehicle Code is amended to read:

14910. (a) The department shall, with the consent of the applicant, collect the amounts which it has been notified are due pursuant to Sections 40509 and 40509.5, and any service fees added to those amounts, at the time it collects from the applicant any fees and penalties required to issue or renew a driver's license or identification card.

(b) Except as provided in subdivision (c), the department shall remit all amounts collected pursuant to subdivision (a), after deducting the administrative fee authorized in subdivision (c), to each jurisdiction in the amounts due to each jurisdiction according to its notices filed with the department. Within 45 days from the time payment is received by the department, the department shall inform each jurisdiction which of its notices of failure to appear or failure to pay have been discharged.

(c) The department shall assess a fee for posting the bail on each notice of failure to appear or failure to pay which is given to the department pursuant to Section 40509 or 40509.5, in an amount, as determined by the department, that is sufficient to provide a sum equal to its actual costs of administering this section, not to exceed one dollar ($1) per notice. The fees shall be assessed to each jurisdiction on a regular basis by deducting the amount due to the department pursuant to this subdivision from the bails and fines collected pursuant to subdivision (a), prior to remitting the balance to each jurisdiction pursuant to subdivision (b).

(d) Except as provided in subdivision (e) of Section 13364, if bail is collected under this section for the violation of any provisions of this

code, the person shall be deemed to be convicted of those sections violated.

(e) Any amounts collected by the department under this section are nonrefundable by the department.

(f) Notwithstanding Section 42003, payment of bail to the department in accordance with this section shall be paid in full and not in installments.

SEC. 62. Section 21053 of the Vehicle Code is amended to read:

21053. This code, except Chapter 1 (commencing with Section 20000) of Division 10, Article 2 (commencing with Section 23152) of Chapter 12 of Division 11, and Sections 25268 and 25269, does not apply to public employees and publicly owned teams, motor vehicles, and other equipment while actually engaged in work upon the surface of a highway, or work of installation, removal, repairing, or maintaining official traffic control devices. This code does apply to those persons and vehicles when traveling to or from their work.

SEC. 63. Section 21101 of the Vehicle Code is amended to read:

21101. Local authorities, for those highways under their jurisdiction, may adopt rules and regulations by ordinance or resolution on the following matters:

(a) Closing any highway to vehicular traffic when, in the opinion of the legislative body having jurisdiction, the highway is either of the following:

(1) No longer needed for vehicular traffic.

(2) The closure is in the interests of public safety and all the following conditions and requirements are met:

(A) The street proposed for closure is located in a county with a population of 6,000,000 or more.

(B) The street has an unsafe volume of traffic and a significant incidence of crime.

(C) The affected local authority conducts a public hearing on the proposed street closure.

(D) Notice of the hearing is provided to residents and owners of property adjacent to the street proposed for closure.

(E) The local authority makes a finding that closure of the street likely would result in a reduced rate of crime.

(b) Designating any highway as a through highway and requiring that all vehicles observe official traffic control devices before entering or crossing the highway or designating any intersection as a stop intersection and requiring all vehicles to stop at one or more entrances to the intersection.

(c) Prohibiting the use of particular highways by certain vehicles, except as otherwise provided by the Public Utilities Commission pursuant to Article 2 (commencing with Section 1031) of Chapter 5 of Part 1 of Division 1 of the Public Utilities Code.

(d) Closing particular streets during regular school hours for the purpose of conducting automobile driver training programs in the secondary schools and colleges of this state.

(e) Temporarily closing a portion of any street for celebrations, parades, local special events, and other purposes when, in the opinion of local authorities having jurisdiction, the closing is necessary for the safety and protection of persons who are to use that portion of the street during the temporary closing.

(f) Prohibiting entry to, or exit from, or both, from any street by means of islands, curbs, traffic barriers, or other roadway design features to implement the circulation element of a general plan adopted pursuant to Article 6 (commencing with Section 65350) of Chapter 3 of Division 1 of Title 7 of the Government Code. The rules and regulations authorized by this subdivision shall be consistent with the responsibility of local government to provide for the health and safety of its citizens.

SEC. 63.5. Section 21101 of the Vehicle Code is amended to read:

21101. Local authorities, for those highways under their jurisdiction, may adopt rules and regulations by ordinance or resolution on the following matters:

(a) Closing any highway to vehicular traffic when, in the opinion of the legislative body having jurisdiction, the highway is either of the following:

(1) No longer needed for vehicular traffic.

(2) The closure is in the interests of public safety and all of the following conditions and requirements are met:

(A) The street proposed for closure is located in a county with a population of 6,000,000 or more.

(B) The street has an unsafe volume of traffic and a significant incidence of crime.

(C) The affected local authority conducts a public hearing on the proposed street closure.

(D) Notice of the hearing is provided to residents and owners of property adjacent to the street proposed for closure.

(E) The local authority makes a finding that closure of the street likely would result in a reduced rate of crime.

(b) Designating any highway as a through highway and requiring that all vehicles observe official traffic control devices before entering or crossing the highway or designating any intersection as a stop intersection and requiring all vehicles to stop at one or more entrances to the intersection.

(c) Prohibiting the use of particular highways by certain vehicles, except as otherwise provided by the Public Utilities Commission pursuant to Article 2 (commencing with Section 1031) of Chapter 5 of Part 1 of Division 1 of the Public Utilities Code.

(d) Closing particular streets during regular school hours for the purpose of conducting automobile driver training programs in the secondary schools and colleges of this state.

(e) Temporarily closing a portion of any street for celebrations, parades, local special events, and other purposes when, in the opinion of local authorities having jurisdiction or a public officer or employee

that the local authority designates by resolution, the closing is necessary for the safety and protection of persons who are to use that portion of the street during the temporary closing.

(f) Prohibiting entry to, or exit from, or both, from any street by means of islands, curbs, traffic barriers, or other roadway design features to implement the circulation element of a general plan adopted pursuant to Article 6 (commencing with Section 65350) of Chapter 3 of Division 1 of Title 7 of the Government Code. The rules and regulations authorized by this subdivision shall be consistent with the responsibility of local government to provide for the health and safety of its citizens.

SEC. 64. Section 21104 of the Vehicle Code is amended to read:

21104. No ordinance or resolution proposed to be enacted under Section 21101 or subdivision (d) of Section 21100 is effective as to any highway not under the exclusive jurisdiction of the local authority enacting the same, except that an ordinance or resolution which is submitted to the Department of Transportation by a local legislative body in complete draft form for approval prior to the enactment thereof is effective as to any state highway or part thereof specified in the written approval of the department.

This section does not preclude the application of an ordinance or resolution adopted under Section 21101 or subdivision (d) of Section 21100 to streets maintained by a community services district organized pursuant to Division 3 (commencing with Section 61000) of Title 6 of the Government Code.

SEC. 65. Section 21201.3 is added to the Vehicle Code, to read:

21201.3. (a) A bicycle or motorized bicycle used by a peace officer, as defined in Section 830.1 of, subdivision (a), (b), (c), (d), (e), (f), (g), or (i) of Section 830.2 of, subdivision (b) or (d) of Section 830.31 of, subdivision (a) or (b) of Section 830.32 of, Section 830.33 of, subdivision (a) of Section 830.36 of, subdivision (a) of Section 830.4 of, or Section 830.6 of, the Penal Code, in the performance of the peace officer's duties, may display a steady or flashing blue warning light that is visible from the front, sides, or rear of the bicycle or motorized bicycle.

(b) No person shall display a steady or flashing blue warning light on a bicycle or motorized bicycle except as authorized under subdivision (a).

SEC. 66. Section 22500 of the Vehicle Code is amended to read:

22500. No person shall stop, park, or leave standing any vehicle whether attended or unattended, except when necessary to avoid conflict with other traffic or in compliance with the directions of a peace officer or official traffic control device, in any of the following places:

(a) Within an intersection, except adjacent to curbs as may be permitted by local ordinance.

(b) On a crosswalk, except that a bus engaged as a common carrier or a taxicab may stop in an unmarked crosswalk to load or unload

passengers when authorized by the legislative body of any city pursuant to an ordinance.

(c) Between a safety zone and the adjacent right-hand curb or within the area between the zone and the curb as may be indicated by a sign or red paint on the curb, which sign or paint was erected or placed by local authorities pursuant to an ordinance.

(d) Within 15 feet of the driveway entrance to any fire station. This subdivision does not apply to any vehicle owned or operated by a fire department and clearly marked as a fire department vehicle.

(e) In front of a public or private driveway, except that a bus engaged as a common carrier, schoolbus, or a taxicab may stop to load or unload passengers when authorized by local authorities pursuant to an ordinance.

In unincorporated territory, where the entrance of a private road or driveway is not delineated by an opening in a curb or by other curb construction, so much of the surface of the ground as is paved, surfaced, or otherwise plainly marked by vehicle use as a private road or driveway entrance, shall constitute a driveway.

(f) On any portion of a sidewalk, or with the body of the vehicle extending over any portion of a sidewalk, except electric carts when authorized by local ordinance, as specified in Section 21114.5. Lights, mirrors, or devices that are required to be mounted upon a vehicle under this code may extend from the body of the vehicle over the sidewalk to a distance of not more than 10 inches.

(g) Alongside or opposite any street or highway excavation or obstruction when stopping, standing, or parking would obstruct traffic.

(h) On the roadway side of any vehicle stopped, parked, or standing at the curb or edge of a highway, except for a schoolbus when stopped to load or unload pupils in a business or residence district where the speed limit is 25 miles per hour or less.

(i) Except as provided under Section 22500.5, alongside curb space authorized for the loading and unloading of passengers of a bus engaged as a common carrier in local transportation when indicated by a sign or red paint on the curb erected or painted by local authorities pursuant to an ordinance.

(j) In a tube or tunnel, except vehicles of the authorities in charge, being used in the repair, maintenance, or inspection of the facility.

(k) Upon a bridge, except vehicles of the authorities in charge, being used in the repair, maintenance, or inspection of the facility, and except that buses engaged as a common carrier in local transportation may stop to load or unload passengers upon a bridge where sidewalks are provided, when authorized by local authorities pursuant to an ordinance, and except that local authorities pursuant to an ordinance or the Department of Transportation pursuant to an order, within their respective jurisdictions, may permit parking on bridges having sidewalks and shoulders of sufficient width to permit parking without interfering with the normal movement of traffic on

the roadway. Local authorities, by ordinance or resolution, may permit parking on these bridges on state highways in their respective jurisdictions if the ordinance or resolution is first approved in writing by the Department of Transportation. Parking shall not be permitted unless there are signs in place, as may be necessary, to indicate the provisions of local ordinances or the order of the Department of Transportation.

(*l*) In front of that portion of a curb that has been cut down, lowered, or constructed to provide wheelchair accessibility to the sidewalk and that is designated for wheelchair access by either a sign or red paint on the curb pursuant to an ordinance of the local authority.

SEC. 67. 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. 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) This section does not apply to a driver actually engaged in the collection of solid waste or recyclable materials along that driver's collection route if the driver is properly restrained by a safety belt prior to commencing and subsequent to completing the collection route.

(q) 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. 67.5. 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) This section does not apply to a driver actually engaged in the collection of solid waste or recyclable materials along that driver's collection route if the driver is properly restrained by a safety belt prior to commencing and subsequent to completing the collection route.

(q) 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. 68. Section 34501.12 of the Vehicle Code is amended to read:

34501.12. (a) Notwithstanding Section 408, as used in this section and Sections 34505.5 and 34505.6, "motor carrier" means the registered owner of any vehicle described in subdivision (a), (b), (e), (f), or (g) of Section 34500, except in the following circumstances:

(1) The registered owner leases the vehicle to another person for a term of more than four months. If the lease is for more than four months, the lessee is the motor carrier.

(2) The registered owner operates the vehicle exclusively under the authority and direction of another person. If the operation is

exclusively under the authority and direction of another person, that other person may assume the responsibilities as the motor carrier. If not so assumed, the registered owner is the motor carrier. A person who assumes the motor carrier responsibilities of another pursuant to subdivision (b) shall provide to that other person whose motor carrier responsibility is so assumed, a completed copy of a department form documenting that assumption, stating the period for which responsibility is assumed, and signed by an agent of the assuming person. A legible copy shall be carried in each vehicle or combination of vehicles operated on the highway during the period for which responsibility is assumed. That copy shall be presented upon request by any authorized employee of the department. The original completed departmental form documenting the assumption shall be provided to the department within 30 days of the assumption. If the assumption of responsibility is terminated, the person who had assumed responsibility shall so notify the department in writing within 30 days of the termination.

(b) (1) A motor carrier may combine two or more terminals for purposes of the inspection required by subdivision (d) subject to all of the following conditions:

(A) The carrier identifies to the department, in writing, each terminal proposed to be included in the combination of terminals for purposes of this subdivision prior to an inspection of the designated terminal pursuant to subdivision (d).

(B) The carrier provides the department, prior to the inspection of the designated terminal pursuant to subdivision (d) a written listing of all its vehicles of a type subject to subdivision (a), (b), (e), (f), or (g) of Section 34500 which are based at each of the terminals combined for purposes of this subdivision. The listing shall specify the number of vehicles of each type at each terminal.

(C) The carrier provides to the department at the designated terminal during the inspection all maintenance records and driver records and a representative sample of vehicles based at each of the terminals included within the combination of terminals.

(2) If the carrier fails to provide the maintenance records, driver records, and representative sample of vehicles pursuant to subparagraph (C) of paragraph (1), the department shall assign the carrier an unsatisfactory terminal rating and require a reinspection to be conducted pursuant to subdivision (h).

(3) For purposes of this subdivision, the following terms have the meanings given:

(A) "Driver records" includes pull notice system records, driver proficiency records, and driver timekeeping records.

(B) "Maintenance records" includes all required maintenance, lubrication, and repair records and drivers' daily vehicle condition reports.

(C) "Representative sample" means the following, applied separately to the carrier's fleet of motortrucks and truck tractors and its fleet of trailers:

Fleet Size	Representative Sample
1 or 2	All
3 to 8	3
9 to 15	4
16 to 25	6
26 to 50	9
51 to 90	14
91 or more	20

(c) Each motor carrier who, in this state, directs the operation of, or maintains, any vehicle of a type described in subdivision (a) shall designate one or more terminals, as defined in Section 34515, in this state where vehicles can be inspected by the department pursuant to paragraph (3) of subdivision (a) of Section 34501 and where vehicle inspection and maintenance records and driver records will be made available for inspection.

(d) The department shall inspect, at least every 25 months, every terminal, as defined in Section 34515, of any motor carrier who, at any time, operates any vehicle described in subdivision (a).

As used in this section and in Sections 34505.5 and 34505.6, subdivision (f) of Section 34500 includes only those combinations where the gross vehicle weight rating (GVWR) of the towing vehicle exceeds 10,000 pounds, but does not include a pickup truck, and subdivision (g) of Section 34500 includes only those vehicles transporting hazardous material for which the display of placards is required pursuant to Section 27903, a license is required pursuant to Section 32000.5, or for which hazardous waste transporter registration is required pursuant to Section 25163 of the Health and Safety Code. Historical vehicles, as described in Section 5004, vehicles which display special identification plates in accordance with Section 5011, implements of husbandry and farm vehicles, as defined in Chapter 1 (commencing with Section 36000) of Division 16, and vehicles owned or operated by an agency of the federal government are not subject to this section or to Sections 34505.5 and 34505.6.

(e) (1) It is the responsibility of the motor carrier to schedule with the department the inspection required by subdivision (d). The motor carrier shall submit an application form supplied by the department, accompanied by the required fee. The fee, which is nonrefundable, is four hundred dollars ($400) per terminal, except in the case of an owner-operator, as defined in Section 3557 of the Public Utilities Code, or a nonregulated motor carrier who owns,

leases, or otherwise operates not more than one heavy power unit and not more than three towed vehicles described in subdivision (a), (b), (e), (f), or (g) of Section 34500, for which the fee shall be one hundred dollars ($100). Federal, state, and local public entities are exempt from the fee requirements of this section.

(2) Except as provided in paragraph (4), the inspection term for each inspected terminal of a motor carrier shall expire 25 months from the date the terminal receives a satisfactory compliance rating, as specified in subdivision (h). Applications and fees for subsequent inspections shall be submitted not earlier than nine months and not later than seven months before the expiration of the motor carrier's then current inspection term. If the motor carrier has submitted the inspection application and the required accompanying fees, but the department is unable to complete the inspection within the 25-month inspection period, then no additional fee shall be required for the inspection requested in the original application.

(3) All fees collected pursuant to this subdivision shall be deposited in the Motor Vehicle Account in the State Transportation Fund. An amount equal to the fees collected shall be available for appropriation by the Legislature from the Motor Vehicle Account to the department for the purpose of conducting truck terminal inspections and for the additional roadside safety inspections required by Section 34514.

(4) To avoid the scheduling of a renewal terminal inspection pursuant to this section during a carrier's seasonal peak business periods, the current inspection term of a terminal that has paid all required fees and has been rated satisfactory in its last inspection may be reduced by not more than nine months if a written request is submitted by the carrier to the department at least four months prior to the desired inspection month, or at the time of payment of renewal inspection fees in compliance with paragraph (2), whichever date is earlier. A motor carrier may request this adjustment of the inspection term during any inspection cycle. A request made pursuant to this paragraph shall not result in a fee proration and does not relieve the carrier from the requirements of paragraph (2).

(f) It is unlawful for a motor carrier to operate any vehicle subject to this section without having submitted an inspection application and the required fees to the department as required by subdivision (e) or (h).

(g) It is unlawful for any motor carrier to operate any vehicle subject to this section after submitting an inspection application to the department, without the inspection described in subdivision (d) having been performed and a safety compliance report having been issued to the motor carrier within the 25-month inspection period or within 60 days immediately preceding the inspection period.

(h) (1) Any inspected terminal that receives an unsatisfactory compliance rating shall be reinspected within 120 days after the issuance of the unsatisfactory compliance rating.

(2) A terminal's first required reinspection under this subdivision shall be without charge unless one or more of the following is established:

(A) The motor carrier's operation presented an imminent danger to public safety.

(B) The motor carrier was not in compliance with the requirement to enroll all drivers in the pull notice program pursuant to Section 1808.1.

(C) The motor carrier failed to provide all required records and vehicles for a consolidated inspection pursuant to subdivision (b).

(3) If the unsatisfactory rating was assigned for any of the reasons set forth in paragraph (2), the carrier shall submit the required fee as provided in paragraph (4).

(4) Applications for reinspection pursuant to paragraph (3) or for second and subsequent consecutive reinspections under this subdivision shall be accompanied by the fee specified in paragraph (1) of subdivision (e) and shall be filed within 60 days of issuance of the unsatisfactory compliance rating. The reinspection fee is nonrefundable.

(5) When a motor carrier's Motor Carrier of Property Permit or Public Utilities Commission operating authority is suspended as a result of an unsatisfactory compliance rating, the department shall conduct no reinspection until requested to do so by the Department of Motor Vehicles or the Public Utilities Commission, as appropriate.

(i) It is the intent of the Legislature that the department make its best efforts to inspect terminals within the resources provided. In the interest of the state, the Commissioner of the California Highway Patrol may extend for a period not to exceed six months the inspection terms beginning prior to July 1, 1990.

(j) To encourage truck terminal operators to attain continuous satisfactory compliance ratings, the department may establish and implement an incentive program consisting of the following:

(1) After the second consecutive satisfactory compliance rating assigned as a result of an inspection conducted pursuant to subdivision (d), and after each consecutive satisfactory compliance rating thereafter, an appropriate certificate, denoting the number of consecutive satisfactory ratings, shall be awarded to the terminal, unless the terminal has received an unsatisfactory compliance rating as a result of any inspection conducted in the interim between the consecutive inspections conducted under subdivision (d). The certificate authorized under this paragraph shall not be awarded for performance in the administrative review authorized under paragraph (2). However, the certificate shall include a reference to any administrative reviews conducted during the period of consecutive satisfactory ratings.

(2) Unless the department's evaluation of the motor carrier's safety record indicates a declining level of compliance, a terminal that has attained two consecutive satisfactory compliance ratings

assigned following inspections conducted pursuant to subdivision (d) is eligible for an administrative review in lieu of the next required inspection, unless the terminal has received an unsatisfactory compliance rating as a result of any inspection conducted in the interim between the consecutive inspections conducted under subdivision (d). An administrative review shall consist of all of the following:

(A) A signed request by a terminal management representative requesting the administrative review in lieu of the required inspection containing a promise to continue to maintain a satisfactory level of compliance for the next 25-month inspection term.

(B) A review with a terminal management representative of the carrier's record as contained in the department's files. If a terminal has been authorized a second consecutive administrative review, the review required under this subparagraph is optional, and may be omitted at the carrier's request.

(C) Absent any cogent reasons to the contrary, upon completion of subparagraphs (A) and (B), the safety compliance rating assigned during the last required inspection shall be extended for 25 months.

(3) Not more than two administrative reviews may be conducted consecutively. At the completion of the 25-month inspection term following a second administrative review, a terminal inspection shall be conducted pursuant to subdivision (d). If this inspection results in a satisfactory compliance rating, the terminal shall again be eligible for an administrative review in lieu of the next required inspection. If the succession of satisfactory ratings is interrupted by any rating of other than satisfactory, irrespective of the reason for the inspection, the terminal shall again attain two consecutive satisfactory ratings to become eligible for an administrative review.

(4) As a condition for receiving the administrative reviews authorized under this subdivision in lieu of inspections, and in order to ensure that compliance levels remain satisfactory, the motor carrier shall agree to accept random, unannounced inspections by the department.

SEC. 69. Section 34510 of the Vehicle Code is amended to read:

34510. (a) Persons operating vehicles, or combinations of vehicles, in the transportation of hazardous material and subject to this division, shall carry in the vehicle while en route any shipping papers required to accompany the vehicle in accordance with regulations adopted pursuant to Section 2402. The bill of lading or other shipping paper shall be displayed upon demand of any member of the California Highway Patrol or any police officer of a city who is on duty for the exclusive or main purpose of enforcing the provisions of this code.

(b) Upon the request of any person engaged in the loading of a container or trailer, having an actual gross cargo weight of more than 10,000 pounds, with agricultural products at a field or packing shed for transport in intermodal transportation, the vehicle operator shall

provide the person with the tare weight of the tractor, container, or trailer to be loaded.

SEC. 70. 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, the operator of a for-hire tow truck who is in compliance with this subdivision may perform emergency moves at the direction of a peace officer irrespective of the load carried aboard the vehicle being moved.

(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 person or damage to or destruction of property, or both, other than property being transported by the carrier for any shipper or consignee whether the property of one or more than one claimant in any one accident.

(4) Except as provided in paragraph (3), every motor carrier of property, as defined in Section 34601, that transports any hazardous material, as defined by Section 353, shall provide and thereafter continue in effect adequate protection against liability imposed by law on those carriers for the payment of damages for personal injury or death, and damage to or destruction of property, in amounts of not less than the minimum levels of financial responsibility specified for carriers of hazardous materials by the United States Department of Transportation in Part 387 (commencing with Section 387.1) of Title 49 of the Code of Federal Regulations. The applicable minimum levels of financial responsibility required are as follows:

Commodity Transported:	Combined Single Limit Coverage
(a) Oil listed in Section 172.101 of Title 49 of the Code of Federal Regulations; hazardous waste, hazardous materials and hazardous substances defined in Section 171.8 of Title 49 of the Code of Federal Regulations and listed in Section 172.101 of Title 49 of the Code of Federal Regulations, but not mentioned in (c) or (d).	$1,000,000
(b) Hazardous waste as defined in Section 25117 of the Health and Safety Code and in Article 1 (commencing with Section 66261.1) of Chapter 11 of Division 4.5 of Title 22 of the California Code of Regulations, but not mentioned in (c) or (d).	$1,000,000
(c) Hazardous substances, as defined in Section 171.8 of Title 49 of the Code of Federal Regulations, or liquefied compressed gas or compressed gas, transported in cargo tanks, portable tanks, or hopper-type vehicle with capacities in excess of 3,500 water gallons.	$5,000,000
(d) Any quantity of class A or B explosives; any quantity of poison gas (Poison A); or highway route controlled quantity radioactive materials as defined in Section 173.403 of Title 49 of the Code of Federal Regulations.	$5,000,000

(5) The protection required under paragraphs (1), (2), (3), and (4) shall be evidenced by the deposit with the department, covering

each vehicle used or to be used in conducting the service performed by each motor carrier of property, an authorized certificate of public liability and property damage insurance, issued by a company licensed to write the insurance in the State of California, or by a nonadmitted insurer subject to Section 1763 of the Insurance Code.

(6) The protection required under paragraphs (1), (2), (3), and (4) by every motor carrier of property engaged in interstate or foreign transportation of property in or through California, shall be evidenced by the filing and acceptance of a department authorized certificate of insurance, or qualification as a self-insurer as may be authorized by law.

(7) A certificate of insurance, evidencing the protection, shall not be cancelable on less than 30 days' written notice to the department, the notice to commence to run from the date notice is actually received at the office of the department in Sacramento.

(8) Every insurance certificate or equivalent protection to the public shall contain a provision that the certificate or equivalent protection shall remain in full force and effect until canceled in the manner provided by paragraph (7).

(9) Upon cancellation of an insurance certificate or the cancellation of equivalent protection authorized by the Department of Motor Vehicles, the motor carrier permit of any motor carrier of property, shall stand suspended immediately upon the effective date of the cancellations.

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

(11) No motor carrier of property, whose permit has been suspended under paragraph (9) shall resume operations unless and until the carrier has filed an insurance certificate or equivalent protection in effect at the time and that meets the standards set forth in this section. The operative rights of the complying carriers shall be reinstated from suspension upon the filing of an insurance certificate or equivalent protection.

(12) In order to expedite the processing insurance filings by the department, each insurance filing made should contain the insured's California carrier number, if known, in the upper right corner of the certificate.

SEC. 70.5. 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, the operator of a for-hire tow truck who is in compliance with this subdivision may perform emergency moves at the direction of a peace officer irrespective of the load carried aboard the vehicle being moved.

(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. 71. Section 35702 of the Vehicle Code is amended to read:

35702. No ordinance proposed under Section 35701 is effective with respect to any highway which is not under the exclusive jurisdiction of the local authority enacting the ordinance, or, in the case of any state highway, until the ordinance has been submitted by the governing body of the local authority to, and approved in writing by, the Department of Transportation. In submitting a proposed ordinance to the department for approval, the governing body of the local authority shall designate therein, an alternate route for the use of vehicles, which route shall remain unrestricted by any local regulation as to weight limits or types of vehicles so long as the ordinance proposed shall remain in effect. The approval of the proposed ordinance by the Department of Transportation shall constitute an approval by it of the alternate route so designated.

SEC. 72. Section 35712 of the Vehicle Code is amended to read:

35712. (a) Any county may, by ordinance, prohibit the use of any highway located in an unincorporated residential or subdivision area by any commercial vehicle exceeding a gross weight of 14,000 pounds.

(b) Any county of the third class, as defined by Section 28024 of the Government Code, or of the ninth class, as defined by Section 28030 of the Government Code, may, by ordinance, prohibit the use of any highway located in an unincorporated residential or subdivision area by any commercial vehicle exceeding a gross weight of 5,000 pounds.

(c) This section does not apply to a vehicle operated by, or on behalf of, a public utility in connection with the installation, operation, maintenance, or repair of its facilities.

SEC. 73. Section 35714 of the Vehicle Code is amended to read:

35714. No ordinance adopted pursuant to Section 35712 shall be effective with respect to:

(a) Any vehicle which is subject to the provisions of Article 2 (commencing with Section 1031) of Chapter 5 of Part 1 of Division 1 of the Public Utilities Code.

(b) Any highway, any portion of which is also under the jurisdiction of a city, unless the consent of the governing body of the city is first obtained.

(c) Any commercial vehicle coming from an unrestricted highway having ingress and egress by direct route to and from the restricted highway when necessary for the purpose of making pickups or deliveries of goods, wares, and merchandise from or to any building or structure located on the restricted highway or for the purpose of delivering materials to be used in the actual and bona fide repair, alteration, remodeling, or construction of any building or structure upon the restricted highway for which a building permit has previously been obtained.

(d) The operation of ambulances or hearses.

(e) Any vehicle owned, operated, controlled, or used by a public utility in connection with the construction, installation, operation, maintenance, or repair of any public utility facilities.

(f) Any state highway, until the proposed ordinance has been submitted by the board of supervisors of the county to and approved in writing by the Department of Transportation. In submitting a proposed ordinance to the department for approval, the board of supervisors shall designate therein, an alternate route for the use of the vehicles which shall remain unrestricted by any local regulation as to commercial vehicles so long as the ordinance proposed shall remain in effect. The approval of the proposed ordinance by the Department of Transportation shall constitute an approval by the department of the alternate route so designated.

(g) Vehicles operated as an incident to any industrial, commercial or agricultural enterprise conducted within the boundaries of the unincorporated residential subdivision area.

SEC. 74. Section 36101 of the Vehicle Code is amended to read:

36101. The following farm vehicles are exempt from registration, if they have and display an identification plate as specified in Section 5014, and the vehicles shall not be deemed to be implements of husbandry and they shall be subject to all equipment and device requirements as if registered:

(a) A motor vehicle of a size so as to require a permit under Section 35780 owned and operated by a farmer, designed and used exclusively for carrying, or returning empty from carrying, feed and seed products of farming, and used on a highway between one part

of a farm to another part of that farm or from one farm to another farm.

(b) A vehicle equipped with a water tank owned by a farmer and used exclusively to service his or her own implements of husbandry.

(c) A water tank truck that is owned by a farmer, not operated for compensation, and used extensively in the conduct of agricultural operations, when used exclusively (1) for sprinkling water on dirt roads providing access to agricultural fields or (2) transportation of water for irrigation of crops or trees.

(d) (1) A cotton module mover, as defined in Section 36012.

(2) In order to maintain the exemption from registration granted under this subdivision for a truck tractor, when combined with a semitrailer, the owner of that truck tractor shall not operate it during the exemption period in any manner other than as a cotton module mover, as defined in Section 36012, and shall do all of the following:

(A) Register the vehicle with the department before operating it as a commercial motor vehicle.

(B) Apply to the department on a yearly basis for any renewal of the exemption from registration.

(3) Exemption from registration under this subdivision does not exempt a truck tractor, when combined with a semitrailer, operating as a cotton module mover pursuant to Section 36012 and this subdivision from the applicable safety requirements of this code or any regulation adopted pursuant to any statute, including, but not limited to, equipment standards, driver licensing requirements, maximum driving and on-duty hours provisions, log book requirements, drug and alcohol testing, maintenance of vehicles, and any driver or vehicle standards specified in Division 14.8 (commencing with Section 34500).

(4) Truck tractors exempt from registration under this subdivision are subject to the fees imposed under Sections 9250, 9250.8, and 9250.13, and to any other vehicle fees that are imposed by statute on or after January 1, 1998, that are deposited in the Motor Vehicle Account.

(e) A trailer that is equipped with a plenum chamber for the drying of agricultural commodities.

(f) Except as provided in subdivision (j) of Section 36005, a trap wagon, as defined in Section 36016, that is equipped with a fuel tank or tanks. The fuel tank or tanks shall not exceed 3,000 gallons total capacity.

(g) A forklift truck, operated by a farmer not for compensation. For purposes of this section, a hay-squeeze shall be deemed a forklift.

(h) A truck tractor or truck tractor and semitrailer combination specified in this subdivision that is owned by a farmer and operated on the highways only incidental to a farming operation and not for compensation. This subdivision applies only to truck tractors with a manufacturer's gross vehicle weight rating over 10,000 pounds that are equipped with all-wheel drive and off-highway traction tires on

all wheels, and only to semitrailers used in combination with that truck tractor and exclusively in the production or harvesting of melons. The vehicles specified in this subdivision shall not be operated in excess of 25 miles per hour on the highways.

The Commissioner of the California Highway Patrol may, by regulation, prohibit the vehicles specified in this subdivision from operating on specific routes. These vehicles shall not be operated laden on the highway for more than two miles from the point of origin and shall not be operated for more than 30 miles unladen on the highway from the point of origin. These vehicles shall not be operated for more than 15 miles unladen on the highway from the point of origin, unless accompanied by an escort vehicle to the front, and an escort vehicle to the rear.

(i) A motor vehicle specifically designed for, and used exclusively in, an agricultural operation for purposes of carrying, or returning empty from carrying, silage that is operated by a farmer, an employee of the farmer, or a contracted employee of the farmer between one part of a farm to another part of that farm or from one farm to another farm, on a highway for a distance not to exceed 20 miles from the point of origin of the trip. This subdivision does not include a vehicle that is used for the transportation of silage for retail sales.

For the purposes of this subdivision, "silage" includes field corn, sorghum, grass, legumes, cereals, or cereal mixes, either green or mature, converted into feed for livestock.

SEC. 75. Section 40002.1 of the Vehicle Code is amended to read:

40002.1. (a) Whenever any person has failed to appear in the court designated in the notice specified in subdivision (b) of Section 40002, following personal service of the notice or deposit in the mail pursuant to Section 22, the magistrate or clerk of the court may give notice of that fact to the department. Whenever thereafter the matter is adjudicated, including a dismissal of the charges upon forfeiture of bail or otherwise, the magistrate or clerk of the court hearing the matter shall immediately (1) endorse a certificate to that effect, (2) provide the person or the person's attorney with a copy of the certificate, and (3) transmit a copy of the certificate to the department.

(b) No notice of noncompliance may be transmitted to the department pursuant to subdivision (a) if a warrant of arrest has been issued on the same offense pursuant to subdivision (b) of Section 40002. No warrant of arrest may be issued pursuant to subdivision (b) of Section 40002 if a notice of noncompliance has been transmitted to the department on the same offense pursuant to this section, except that, when a notice has been received by the court pursuant to subdivision (c) of Section 4766 or recalled by motion of the court, a warrant may then be issued.

SEC. 76. Section 40509 of the Vehicle Code is amended to read:

40509. (a) Except as required under subdivision (c) of Section 40509.5, if any person has violated a written promise to appear or a lawfully granted continuance of his or her promise to appear in court or before the person authorized to receive a deposit of bail, or violated an order to appear in court, including, but not limited to, a written notice to appear issued in accordance with Section 40518, the magistrate or clerk of the court may give notice of the failure to appear to the department for any violation of this code, or any violation that can be heard by a juvenile traffic hearing referee pursuant to Section 256 of the Welfare and Institutions Code, or any violation of any other statute relating to the safe operation of a vehicle, except violations not required to be reported pursuant to paragraphs (1), (2), (3), (6), and (7) of subdivision (b) of Section 1803. If thereafter the case in which the promise was given is adjudicated or the person who has violated the court order appears in court or otherwise satisfies the order of the court, the magistrate or clerk of the court hearing the case shall sign and file with the department a certificate to that effect.

(b) If any person has willfully failed to pay a lawfully imposed fine within the time authorized by the court or to pay a fine pursuant to subdivision (a) of Section 42003, the magistrate or clerk of the court may give notice of the fact to the department for any violation, except violations not required to be reported pursuant to paragraphs (1), (2), (3), (6), and (7) of subdivision (b) of Section 1803. If thereafter the fine is fully paid, the magistrate or clerk of the court shall issue and file with the department a certificate showing that the fine has been paid.

(c) (1) Notwithstanding subdivisions (a) and (b), the court may notify the department of the total amount of bail, fines, assessments, and fees authorized or required by this code, including Section 40508.5, which are unpaid by any person.

(2) Once a court has established the amount of a fine and any assessments, and notified the department, the court shall not further enhance or modify that amount.

(3) This subdivision applies only to violations of this code that do not require a mandatory court appearance, are not contested by the defendant, and do not require proof of correction certified by the court.

(d) With respect to a violation of this code, this section is applicable to any court which has not elected to be subject to the notice requirements of subdivision (b) of Section 40509.5.

(e) Any violation subject to Section 40001, which is the responsibility of the owner of the vehicle, shall not be reported under this section.

SEC. 77. Section 40509.1 of the Vehicle Code is amended to read:

40509.1. If any person has willfully failed to comply with a court order, except a failure to appear, to pay a fine, or to attend traffic violator school, which was issued for a violation of this code, the

magistrate or clerk of the court may give notice of the fact to the department.

SEC. 78. Section 40509.5 of the Vehicle Code is amended to read:

40509.5. (a) Except as required under subdivision (c), if, with respect to an offense described in subdivision (e), any person has violated his or her written promise to appear or a lawfully granted continuance of his or her promise to appear in court or before the person authorized to receive a deposit of bail, or violated an order to appear in court, the magistrate or clerk of the court may give notice of the failure to appear to the department for any violation of this code, any violation that can be heard by a juvenile traffic hearing referee pursuant to Section 256 of the Welfare and Institutions Code, or any violation of any other statute relating to the safe operation of a vehicle, except violations not required to be reported pursuant to paragraphs (1), (2), (3), (6), and (7) of subdivision (b) of Section 1803. If thereafter the case in which the promise was given is adjudicated or the person who has violated the court order appears in court and satisfies the order of the court, the magistrate or clerk of the court hearing the case shall sign and file with the department a certificate to that effect.

(b) If, with respect to an offense described in subdivision (e), willfully failed to pay a lawfully imposed fine within the time authorized by the court or to pay a fine pursuant to subdivision (a) of Section 42003, the magistrate or clerk of the court may give notice of the fact to the department for any violation, except violations not required to be reported pursuant to paragraphs (1), (2), (3), (6), and (7) of subdivision (b) of Section 1803. If thereafter the fine is fully paid, the magistrate or clerk of the court shall issue and file with the department a certificate showing that the fine has been paid.

(c) If any person charged with a violation of Section 23152 or 23153, or Section 191.5 of the Penal Code, or paragraph (3) of subdivision (c) of Section 192 of that code has violated a lawfully granted continuance of his or her promise to appear in court or is released from custody on his or her own recognizance and fails to appear in court or before the person authorized to receive a deposit of bail, or violated an order to appear in court, the magistrate or clerk of the court shall give notice to the department of the failure to appear. If thereafter the case in which the notice was given is adjudicated or the person who has violated the court order appears in court or otherwise satisfies the order of the court, the magistrate or clerk of the court hearing the case shall prepare and forward to the department a certificate to that effect.

(d) Except as required under subdivision (c), the court shall mail a courtesy warning notice to the defendant by first-class mail at the address shown on the notice to appear, at least 10 days before sending a notice to the department under this section.

(e) If the court notifies the department of a failure to appear or pay a fine pursuant to subdivision (a) or (b), no arrest warrant shall

be issued for an alleged violation of subdivision (a) or (b) of Section 40508, unless one of the following criteria is met:

(1) The alleged underlying offense is a misdemeanor or felony.

(2) The alleged underlying offense is a violation of any provision of Division 12 (commencing with Section 24000), Division 13 (commencing with Section 29000), or Division 15 (commencing with Section 35000), required to be reported pursuant to Section 1803.

(3) The driver's record does not show that the defendant has a valid California driver's license.

(4) The driver's record shows an unresolved charge that the defendant is in violation of his or her written promise to appear for one or more other alleged violations of the law.

(f) Except as required under subdivision (c), in addition to the proceedings described in this section, the court may elect to notify the department pursuant to subdivision (c) of Section 40509.

(g) This section is applicable to courts which have elected to provide notice pursuant to subdivision (b). The method of commencing or terminating an election to proceed under this section shall be prescribed by the department.

(h) Any violation subject to Section 40001, which is the responsibility of the owner of the vehicle, shall not be reported under this section.

SEC. 78.5. Section 40509.5 of the Vehicle Code is amended to read:

40509.5. (a) Except as required under subdivision (c), if, with respect to an offense described in subdivision (e), any person has violated his or her written promise to appear or a lawfully granted continuance of his or her promise to appear in court or before the person authorized to receive a deposit of bail, or violated an order to appear in court, including, but not limited to, a written notice to appear issued in accordance with Section 40518, the magistrate or clerk of the court may give notice of the failure to appear to the department for any violation of this code, any violation that can be heard by a juvenile traffic hearing referee pursuant to Section 256 of the Welfare and Institutions Code, or any violation of any other statute relating to the safe operation of a vehicle, except violations not required to be reported pursuant to paragraphs (1), (2), (3), (6), and (7) of subdivision (b) of Section 1803. If thereafter the case in which the promise was given is adjudicated or the person who has violated the court order appears in court and satisfies the order of the court, the magistrate or clerk of the court hearing the case shall sign and file with the department a certificate to that effect.

(b) If, with respect to an offense described in subdivision (e), any person has willfully failed to pay a lawfully imposed fine within the time authorized by the court or to pay a fine pursuant to subdivision (a) of Section 42003, the magistrate or clerk of the court may give notice of the fact to the department for any violation, except violations not required to be reported pursuant to paragraphs (1),

(2), (3), (6), and (7) of subdivision (b) of Section 1803. If thereafter the fine is fully paid, the magistrate or clerk of the court shall issue and file with the department a certificate showing that the fine has been paid.

(c) If any person charged with a violation of Section 23152 or 23153, or Section 191.5 of the Penal Code, or paragraph (3) of subdivision (c) of Section 192 of that code has violated a lawfully granted continuance of his or her promise to appear in court or is released from custody on his or her own recognizance and fails to appear in court or before the person authorized to receive a deposit of bail, or violated an order to appear in court, the magistrate or clerk of the court shall give notice to the department of the failure to appear. If thereafter the case in which the notice was given is adjudicated or the person who has violated the court order appears in court or otherwise satisfies the order of the court, the magistrate or clerk of the court hearing the case shall prepare and forward to the department a certificate to that effect.

(d) Except as required under subdivision (c), the court shall mail a courtesy warning notice to the defendant by first-class mail at the address shown on the notice to appear, at least 10 days before sending a notice to the department under this section.

(e) If the court notifies the department of a failure to appear or pay a fine pursuant to subdivision (a) or (b), no arrest warrant shall be issued for an alleged violation of subdivision (a) or (b) of Section 40508, unless one of the following criteria is met:

(1) The alleged underlying offense is a misdemeanor or felony.

(2) The alleged underlying offense is a violation of any provision of Division 12 (commencing with Section 24000), Division 13 (commencing with Section 29000), or Division 15 (commencing with Section 35000), required to be reported pursuant to Section 1803.

(3) The driver's record does not show that the defendant has a valid California driver's license.

(4) The driver's record shows an unresolved charge that the defendant is in violation of his or her written promise to appear for one or more other alleged violations of the law.

(f) Except as required under subdivision (c), in addition to the proceedings described in this section, the court may elect to notify the department pursuant to subdivision (c) of Section 40509.

(g) This section is applicable to courts which have elected to provide notice pursuant to subdivision (b). The method of commencing or terminating an election to proceed under this section shall be prescribed by the department.

(h) Any violation subject to Section 40001, which is the responsibility of the owner of the vehicle, shall not be reported under this section.

SEC. 79. (a) Section 9.5 of this bill incorporates amendments to Section 163 of the Streets and Highways Code proposed by both this bill and AB 2035. 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 163 of the Streets and Highways Code, and (3) this bill is enacted after AB 2035, in which case Section 163 of the Streets and Highways Code, as amended by AB 2035, shall remain operative only until the operative date of this bill, at which time Section 9.5 of this bill shall become operative, and Section 9 of this bill shall not become operative.

(b) Section 14.5 of this bill incorporates amendments to Section 253.1 of the Streets and Highways Code proposed by both this bill and AB 2388. 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 253.1 of the Streets and Highways Code, and (3) this bill is enacted after AB 2388, in which case Section 14 of this bill shall not become operative.

(c) Section 54.5 of this bill incorporates amendments to Section 12804.9 of the Vehicle Code proposed by both this bill and SB 1637. 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 12804.9 of the Vehicle Code, and (3) this bill is enacted after SB 1637, in which case Section 54 of this bill shall not become operative.

(d) Section 59.5 of this bill incorporates amendments to Section 13370 of the Vehicle 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 13370 of the Vehicle Code, and (3) this bill is enacted after AB 2102, in which case Section 13370 of the Vehicle Code, as amended by AB 2102, shall remain operative only until the operative date of this bill, at which time Section 59.5 of this bill shall become operative, and Section 59 of this bill shall not become operative.

(e) Section 63.5 of this bill incorporates amendments to Section 21101 of the Vehicle Code proposed by both this bill and SB 1649. 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 21101 of the Vehicle Code, and (3) this bill is enacted after SB 1649, in which case Section 63 of this bill shall not become operative.

(f) Section 67.5 of this bill incorporates amendments to Section 27315 of the Vehicle Code proposed by both this bill and AB 2062. 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 27315 of the Vehicle Code, and (3) this bill is enacted after AB 2062, in which case Section 67 of this bill shall not become operative.

(g) Section 70.5 of this bill incorporates amendments to Section 34631.5 of the Vehicle Code proposed by both this bill and AB 2372. 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 2372, in which case Section 70 of this bill shall not become operative.

(h) Section 78.5 of this bill incorporates amendments to Section 40509.5 of the Vehicle Code proposed by both this bill and SB 1637. 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 40509.5 of the Vehicle Code, and (3) this bill is enacted after SB 1637, in which case Section 78 of this bill shall not become operative.

SEC. 80. 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 878

An act to amend Sections 120, 125.7, 1621.1, 1632, 1633.5, 1763, 2067, 2103, 2225.5, 2239, 2242, 2350, 2355, 3512, 3516.5, 3517, 3519, 3520, 3521.2, 3523, 3524, 3526, 3527, 3528, 3530, 3534.1, 3534.3, 4301, 4322, 5053, 5055, 5056, 5060, 5070.6, 5072, 5073, 5104, 5134, 7301, 7348, 7358, 7362.1, 7362.2, 7362.3, 7390, 7391, 7392, 7393, 7394, 7395, 7423.5, 7622.3, 7651, 8742, 8773.1, 8773.2, and 13660 of, to add Sections 4115.5, 4301.5, 5058.1, and 7427 to, and to repeal Sections 1621.2, 5059, 5070.1, 5071, 5074, 5075, 5076, 5153, and 7303 of, the Business and Professions Code, to amend Sections 11371 and 11529 of the Government Code, and to amend Section 11166 of, and to repeal and add Section 11167 of, the Health and Safety Code, relating to professions and vocations.

[Approved by Governor September 26, 1998. Filed with Secretary of State September 28, 1998.]

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

SECTION 1. Section 120 of the Business and Professions Code is amended to read:

120. (a) The provisions of subdivision (a) of Section 119 shall not apply to a surviving spouse having in his or her possession or displaying a deceased spouse's canceled certified public accountant certificate or canceled public accountant certificate which has been canceled by official action of the State Board of Accountancy.

(b) Notwithstanding Section 119, any person who has received a certificate of certified public accountant or a certificate of public accountant from the board may possess and may display the certificate received unless the person's certificate, permit, or registration has been suspended or revoked.

SEC. 1.5. Section 125.7 of the Business and Professions Code is amended to read:

125.7. In addition to the remedy provided for in Section 125.5, the superior court for the county in which any licensee licensed under Division 2 (commencing with Section 500), or any initiative act referred to in that division, has engaged or is about to engage in any act that constitutes a violation of a chapter of this code administered or enforced by a board referred to in Division 2 (commencing with Section 500), may, upon a petition filed by the board and accompanied by an affidavit or affidavits in support thereof and a memorandum of points and authorities, issue a temporary restraining order or other appropriate order restraining the licensee from engaging in the business or profession for which the person is licensed or from any part thereof, in accordance with this section.

(a) If the affidavits in support of the petition show that the licensee has engaged or is about to engage in acts or omissions constituting a violation of a chapter of this code and if the court is satisfied that permitting the licensee to continue to engage in the business or profession for which the license was issued will endanger the public health, safety, or welfare, the court may issue an order temporarily restraining the licensee from engaging in the profession for which he or she is licensed.

(b) The order may not be issued without notice to the licensee unless it appears from facts shown by the affidavits that serious injury would result to the public before the matter can be heard on notice.

(c) Except as otherwise specifically provided by this section, proceedings under this section shall be governed by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure.

(d) When a restraining order is issued pursuant to this section, or within a time to be allowed by the superior court, but in any case not more than 30 days after the restraining order is issued, an accusation shall be filed with the board pursuant to Section 11503 of the Government Code or, in the case of a licensee of the State

Department of Health Services, with that department pursuant to Section 100171 of the Health and Safety Code. The accusation shall be served upon the licensee as provided by Section 11505 of the Government Code. The licensee shall have all of the rights and privileges available as specified in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. However, if the licensee requests a hearing on the accusation, the board shall provide the licensee with a hearing within 30 days of the request and a decision within 15 days of the date the decision is received from the administrative law judge, or the court may nullify the restraining order previously issued. Any restraining order issued pursuant to this section shall be dissolved by operation of law at the time the board's decision is subject to judicial review pursuant to Section 1094.5 of the Code of Civil Procedure.

(e) The remedy provided for in this section shall be in addition to, and not a limitation upon, the authority provided by any other provision of this code.

SEC. 2. Section 1621.1 of the Business and Professions Code is amended to read:

1621.1. (a) The examining committee shall consist of members appointed by the board.

(b) Each member of the examining committee shall meet either of the following requirements:

(1) Possess a valid license to practice dentistry in this state, and have engaged in the practice of dentistry in this state for at least five years preceding his or her appointment.

(2) Possess a valid license to practice dental hygiene in this state, and have engaged in the practice of dental hygiene for at least five years preceding his or her appointment.

(c) A member of the examining committee shall not be an officer or faculty member of any college, school, or institution engaged in dental instruction.

SEC. 3. Section 1621.2 of the Business and Professions Code is repealed.

SEC. 4. Section 1632 of the Business and Professions Code is amended to read:

1632. Each applicant shall give clinical demonstrations of his or her skill in operative dentistry, prosthetic dentistry, and diagnosis and treatment in periodontics. The applicant shall also give written demonstrations of his or her judgment in diagnosis-treatment planning, prosthetic dentistry, and endodontics. The examination may include an examination in California law and ethics.

SEC. 5. Section 1633.5 of the Business and Professions Code is amended to read:

1633.5. Notwithstanding any other provision of this chapter, the board shall require each applicant to successfully complete the National Board of Dental Examiners' written examination. Successful passage of the National Board of Dental Examiners' written

examination shall satisfy the Section 1632 requirement for a written demonstration of judgment in dental diagnosis and treatment planning.

SEC. 6. Section 1763 of the Business and Professions Code is amended to read:

1763. A licensed dentist may utilize in his or her practice no more than two dental auxiliaries in extended functions licensed pursuant to Sections 1756 and 1761.

SEC. 7. Section 2067 of the Business and Professions Code is amended to read:

2067. An applicant for a physician's and surgeon's certificate who is found by the Division of Licensing to be deficient in the education and clinical instruction required by Sections 2089 and 2089.5 or who is required pursuant to Section 2185 to complete additional medical instruction may engage in the practice of medicine in this state in any setting approved by the Division of Licensing for the period of time prescribed by the Division of Licensing.

SEC. 8. Section 2103 of the Business and Professions Code is amended to read:

2103. An applicant who is a citizen of the United States shall be eligible for a physician's and surgeon's certificate if he or she has completed the following requirements:

(a) Official transcripts or other official evidence satisfactory to the Division of Licensing of compliance with Section 2088.

(b) Official evidence satisfactory to the division of completion of a resident course or professional instruction equivalent to that required in Section 2089 in a medical school located outside the United States or Canada. 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).

(c) Official evidence satisfactory to the division of completion of all formal requirements of the medical school for graduation, except the applicant shall not be required to have completed an internship or social service or be admitted or licensed to practice medicine in the country in which the professional instruction was completed.

(d) Attained a score satisfactory to an approved medical school on a qualifying examination acceptable to the division.

(e) Successful completion of one academic year of supervised clinical training in a program approved by the division pursuant to Section 2104. The division shall also recognize as compliance with this subdivision the successful completion of a one-year supervised clinical medical internship operated by a medical school pursuant to Chapter 85 of the Statutes of 1972 and as amended by Chapter 888 of the Statutes of 1973 as the equivalent of the year of supervised clinical training required by this section.

(1) Training received in the academic year of supervised clinical training approved pursuant to Section 2104 shall be considered as

part of the total academic curriculum for purposes of meeting the requirements of Sections 2089 and 2089.5.

(2) An applicant who has passed the basic science and English language examinations required for certification by the Educational Commission for Foreign Medical Graduates may present evidence of those passing scores along with a certificate of completion of one academic year of supervised clinical training in a program approved by the division pursuant to Section 2104 in satisfaction of the formal certification requirements of subdivision (c) of Section 2101 or subdivision (b) of Section 2102.

(f) Satisfactory completion of the postgraduate training required under Section 2096.

(g) Passed the written examination required for certification as a physician and surgeon in this chapter.

SEC. 9. 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 shall be 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 grounds 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. 10. Section 2239 of the Business and Professions Code is amended to read:

2239. (a) The use or prescribing for or administering to himself or herself, of any controlled substance; or the use of any of the dangerous drugs specified in Section 4022, or of alcoholic beverages, to the extent, or in such a manner as to be dangerous or injurious to the licensee, or to any other person or to the public, or to the extent that such use impairs the ability of the licensee to practice medicine safely or more than one misdemeanor or any felony involving the use, consumption, or self-administration of any of the substances referred to in this section, or any combination thereof, constitutes unprofessional conduct. The record of the conviction is conclusive evidence of such unprofessional conduct.

(b) A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this section. The Division of Medical Quality may order discipline of the licensee in accordance with Section 2227 or the Division of Licensing may order the denial of the license when the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.

SEC. 11. Section 2242 of the Business and Professions Code is amended to read:

2242. (a) Prescribing, dispensing, or furnishing dangerous drugs as defined in Section 4022 without a good faith prior examination and medical indication therefor, constitutes unprofessional conduct.

(b) No licensee shall be found to have committed unprofessional conduct within the meaning of this section if, at the time the drugs were prescribed, dispensed, or furnished, any of the following applies:

(1) The licensee was a designated physician and surgeon or podiatrist serving in the absence of the patient's physician and surgeon or podiatrist, as the case may be, provided such drugs were prescribed, dispensed, or furnished only as necessary to maintain the patient until the return of his or her practitioner, but in any case no longer than 72 hours.

(2) The licensee transmitted the order for such drugs to a registered nurse or to a licensed vocational nurse in an inpatient

facility (A) if such practitioner had consulted with such registered nurse or licensed vocational nurse who had reviewed the patient's records and (B) if such practitioner was designated as the practitioner to serve in the absence of the patient's physician and surgeon or podiatrist, as the case may be.

(3) The licensee was a designated practitioner serving in the absence of the patient's physician and surgeon or podiatrist, as the case may be, and was in possession of or had utilized the patient's records and ordered the renewal of a medically indicated prescription for an amount not exceeding the original prescription in strength or amount or for more than one refilling.

SEC. 12. Section 2350 of the Business and Professions Code is amended to read:

2350. (a) The division shall establish criteria for the acceptance, denial, or termination of physicians and surgeons in a diversion program. Only those physicians and surgeons who have voluntarily requested diversion treatment and supervision by a committee shall participate in a program.

(b) A physician and surgeon under current investigation by the division may request entry into the diversion program by contacting the Chief or Deputy Chief of Enforcement of the Medical Board of California. The Chief or Deputy Chief of Enforcement of the Medical Board of California shall refer the physician and surgeon who requests participation in the diversion program to a committee for evaluation of eligibility, even if the physician and surgeon is currently under investigation by the division, as long as the investigation is based primarily on the self-administration of drugs or alcohol under Section 2239, or the illegal possession, prescription, or nonviolent procurement of drugs for self-administration, and does not involve actual harm to the public or his or her patients. Prior to referring a physician and surgeon to the diversion program, the division may require any physician and surgeon who requests participation under those circumstances, or where there are other violations, to execute a statement of understanding wherein the physician and surgeon agrees that violations of this chapter, or other statutes that would otherwise be the basis for discipline, may nevertheless be prosecuted should the physician and surgeon be terminated from the program for failure to comply with program requirements.

(c) Neither acceptance into nor participation in the diversion program shall preclude the division from investigating or continuing to investigate any physician and surgeon for any unprofessional conduct committed before, during, or after participation in the diversion program.

(d) Neither acceptance into nor participation in the diversion program shall preclude the division from taking disciplinary action or continuing to take disciplinary action against any physician and surgeon for any unprofessional conduct committed before, during, or after participation in the diversion program, except for that conduct

which resulted in the physician and surgeon's referral to the diversion program.

(e) Any physician and surgeon terminated from the diversion program for failure to comply with program requirements is subject to disciplinary action by the division for acts committed before, during, and after participation in the diversion program. The division shall not be precluded from taking disciplinary action for violations identified in the statement of understanding described in subdivision (b) if a physician and surgeon is terminated from the diversion program for failure to comply with program requirements. The termination of a physician and surgeon who has been referred to the diversion program pursuant to subdivision (b) shall be reported by the committee to the division.

(f) Nothing in this section shall preclude a physician and surgeon who is not the subject of a current investigation from self-referring to the diversion program on a confidential basis. Subdivision (b) shall not apply to a physician and surgeon who applies for the diversion program in accordance with this subdivision.

(g) Any physician and surgeon who successfully completes the diversion program shall not be subject to any disciplinary actions by the board for any alleged violation that resulted in referral to the diversion program. Successful completion shall be determined by the committee but shall include, at a minimum, two years during which the physician and surgeon has remained free from the use of drugs or alcohol and adopted a lifestyle to maintain a state of sobriety.

(h) The division shall establish criteria for the selection of administrative physicians and surgeons who shall examine physicians and surgeons requesting diversion under a program. Any reports made under this article by the administrative physician and surgeon shall constitute an exception to Section 2263 and to Sections 994 and 995 of the Evidence Code.

(i) The division shall require biannual reports from each committee which shall include, but not be limited to, information concerning the number of cases accepted, denied, or terminated with compliance or noncompliance, and a cost analysis of the program. The Bureau of Medical Statistics may assist the committees in the preparation of the reports.

(j) Each physician and surgeon shall sign an agreement that diversion records may be used in disciplinary or criminal proceedings if the physician and surgeon is terminated from the diversion program and one of the following conditions exists:

(1) His or her participation in the diversion program is a condition of probation.

(2) He or she has disciplinary action pending or was under investigation at the time of entering the diversion program.

(3) A diversion evaluation committee determines that he or she presents a threat to the public health or safety.

This agreement shall also authorize the diversion program to exchange information about the physician and surgeon's recovery with a hospital well-being committee or monitor and with the board's licensing program, where appropriate, and to acknowledge, with the physician and surgeon's approval, that he or she is participating in the diversion program. Nothing in this section shall be construed to allow release of alcohol or drug treatment records in violation of federal or state law.

SEC. 13. Section 2355 of the Business and Professions Code is amended to read:

2355. (a) After a committee in its discretion has determined that a physician and surgeon has been rehabilitated and the diversion program is completed, the committee shall purge and destroy all treatment records pertaining to the physician's and surgeon's participation in a diversion program, except as otherwise provided in this section. Notwithstanding Section 156.1, the board shall retain any other information and records that it specifies by regulation.

(b) Except as otherwise provided by Section 2350, all board and committee records and records of proceedings pertaining to the treatment of a physician and surgeon in a program shall be kept confidential and are not subject to discovery or subpoena.

SEC. 14. Section 3512 of the Business and Professions Code is amended to read:

3512. Except as provided in Sections 159.5 and 2020, the committee shall employ within the limits of the Physician Assistant Fund all personnel necessary to carry out the provisions of this chapter including an executive officer who shall be exempt from civil service. The board and committee shall make all necessary expenditures to carry out the provisions of this chapter from the funds established by Section 3520. The committee may accept contributions to effect the purposes of this chapter.

SEC. 15. Section 3516.5 of the Business and Professions Code is amended to read:

3516.5. (a) Notwithstanding any other provision of law and in accordance with regulations established by the board, the director of emergency care services in a hospital with an approved program for the training of emergency care physician assistants, may apply to the board for authorization under which such director may grant approval for emergency care physicians on the staff of such hospital to supervise emergency care physician assistants.

(b) The application shall encompass all supervising physicians employed in such service.

(c) Nothing in this section shall be construed to authorize any one emergency care physician while on duty to supervise more than two physician assistants at any one time.

(d) A violation of this section by the director of emergency care services in a hospital with an approved program for the training of emergency care physician assistants constitutes unprofessional

conduct within the meaning of Chapter 5 (commencing with Section 2000) of Division 2.

(e) Any violation of this section shall be grounds for suspension of the approval of the director or disciplinary action against the director or suspension of the approved program under Section 3527.

SEC. 16. Section 3517 of the Business and Professions Code is amended to read:

3517. The committee shall require a written examination of physician assistants in the manner and under the rules and regulations as it shall prescribe, but the examination shall be conducted in that manner as to ensure that the identity of each applicant taking the examination will be unknown to all of the examiners until all examination papers have been graded. Except as otherwise provided in this chapter, or by regulation, no physician assistant applicant shall receive approval under this chapter without first successfully passing an examination given under the direction of the committee.

Examinations for licensure as a physician assistant may be required by the committee under a uniform examination system, and for that purpose the committee may make those arrangements with organizations furnishing examination material as may, in its discretion, be desirable. The committee shall, however, establish a passing score for each examination. The licensure examination for physician assistants shall be held by the committee at least once a year with such additional examinations as the committee deems necessary. The time and place of examination shall be fixed by the committee.

The committee may grant interim approval to an applicant for licensure as a physician assistant.

Every applicant who has complied with Section 3519, subdivision (a), who has filed an application with the committee may, between the date of receipt of notice that the application is on file and the date of receipt of his or her license, practice as a physician assistant on interim approval under the supervision of an approved physician. Applicants shall notify the committee in writing of any and all supervising physicians under whom they will be performing services prior to practicing under interim approval. If the applicant shall fail to take the next succeeding licensure examination or fails to pass the examination or fails to receive a license, all privileges under this section shall automatically cease upon written notification sent to the applicant by the committee.

In the event the licensure examination required by the committee is under a uniform examination system, the applicant shall provide evidence satisfactory to the committee (a) that an application has been filed and accepted for the examination and (b) that the organization administering the examination has been requested to transmit the applicant's scores to the committee in order for the applicant to maintain interim approval. The applicant shall be

deemed to have failed the examination unless the applicant provides evidence to the committee within 30 days after scores have been released that he or she has passed the examination.

SEC. 17. Section 3519 of the Business and Professions Code is amended to read:

3519. The committee shall issue under the name of the Medical Board of California a license to all physician assistant applicants who meet all of the following requirements:

(a) Provide evidence of one of the following:

(1) Successful completion of an approved program.

(2) Successful completion in a medical school approved by the Division of Licensing of a resident course of professional instruction which meets the requirements of Sections 2088 and 2089.

(b) Pass any examination required under Section 3517.

(c) Not be subject to denial of licensure under Division 1.5 (commencing with Section 475) or Section 3527.

(d) Pay all fees required under Section 3521.1.

SEC. 18. Section 3520 of the Business and Professions Code is amended to read:

3520. Within 10 days after the beginning of each calendar month the board shall report to the Controller the amount and source of all collections made under this chapter and at the same time pay all those sums into the State Treasury, where they shall be credited to the Physician Assistant Fund, which fund is hereby created. All money in the fund is continuously appropriated to carry out the purpose of this chapter.

SEC. 19. Section 3521.2 of the Business and Professions Code is amended to read:

3521.2. The fees to be paid by physician assistant training programs are to be set by the committee as follows:

(a) An application fee not to exceed five hundred dollars ($500) shall be charged to each applicant seeking program approval by the committee.

(b) An approval fee not to exceed one hundred dollars ($100) shall be charged to each program upon its approval by the committee.

SEC. 20. Section 3523 of the Business and Professions Code is amended to read:

3523. All physician assistant licenses shall expire at 12 midnight of the last day of the birth month of the licensee during the second year of a two-year term if not renewed.

The committee shall establish by regulation procedures for the administration of a birthdate renewal program, including, but not limited to, the establishment of a system of staggered license expiration dates and a pro rata formula for the payment of renewal fees by physician assistants affected by the implementation of the program.

To renew an unexpired license, the licensee shall, on or before the date of expiration of the license, apply for renewal on a form provided by the committee, accompanied by the prescribed renewal fee.

SEC. 21. Section 3524 of the Business and Professions Code is amended to read:

3524. A license or approval which has expired may be renewed at any time within five years after its expiration by filing an application for renewal on a form prescribed by the committee or board, as the case may be, and payment of the renewal fee in effect on the preceding regular renewal date. If the license or approval is not renewed within 30 days after its expiration, the licensed physician assistant and approved supervising physician, as a condition precedent to renewal, shall also pay the prescribed delinquency fee, if any. Renewal under this section shall be effective on the date on which the application is filed, on the date on which the renewal fee is paid, or on the date on which the delinquency fee, if any, is paid, whichever occurs last. If so renewed, the license shall continue in effect through the expiration date provided in Section 3522 or 3523 which next occurs after the effective date of the renewal, when it shall expire, if it is not again renewed.

SEC. 22. Section 3526 of the Business and Professions Code is amended to read:

3526. A person who fails to renew his or her license or approval 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 or approval if he or she:

(a) Has not committed any acts or crimes constituting grounds for denial of licensure under Division 1.5 (commencing with Section 475).

(b) Takes and passes the examination, 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 committee that, with due regard for the public interest, he or she is qualified to practice as a physician assistant.

(c) Pays all of the fees that would be required as if application for licensure was being made for the first time.

SEC. 23. Section 3527 of the Business and Professions Code is amended to read:

3527. (a) The committee may order the denial of an application for, or the issuance subject to terms and conditions of, or the suspension or revocation of, or the imposition of probationary conditions upon a physician assistant license after a hearing as required in Section 3528 for unprofessional conduct which includes, but is not limited to, a violation of this chapter, a violation of the Medical Practice Act, or a violation of the regulations adopted by the committee or the board.

(b) The committee may order the denial of an application for, or the suspension or revocation of, or the imposition of probationary

conditions upon, an approved program after a hearing as required in Section 3528 for a violation of this chapter or the regulations adopted pursuant thereto.

(c) The board may order the denial of an application for, or the issuance subject to terms and conditions of, or the suspension or revocation of, or the imposition of probationary conditions upon, an approval to supervise a physician assistant, after a hearing as required in Section 3528, for unprofessional conduct, which includes, but is not limited to, a violation of this chapter, a violation of the Medical Practice Act, or a violation of the regulations adopted by the committee or the board.

(d) Notwithstanding subdivision (c), the Division of Medical Quality of the Medical Board of California, in conjunction with an action it has commenced against a physician and surgeon, may, in its own discretion and without the concurrence of the board, order the suspension or revocation of, or the imposition of probationary conditions upon, an approval to supervise a physician assistant, after a hearing as required in Section 3528, for unprofessional conduct, which includes, but is not limited to, a violation of this chapter, a violation of the Medical Practice Act, or a violation of the regulations adopted by the committee or the board.

(e) The committee may order the denial of an application for, or the suspension or revocation of, or the imposition of probationary conditions upon, a physician assistant license, after a hearing as required in Section 3528 for unprofessional conduct which includes, except for good cause, the knowing failure of a licensee to protect patients by failing to follow infection control guidelines of the committee, thereby risking transmission of blood-borne infectious diseases from licensee to patient, from patient to patient, and from patient to licensee. In administering this subdivision, the committee shall consider referencing the standards, regulations, and guidelines of the State Department of Health Services developed pursuant to Section 1250.11 of the Health and Safety Code and the standards, regulations, and guidelines pursuant to the California Occupational Safety and Health Act of 1973 (Part 1 (commencing with Section 6300) of Division 5 of the Labor Code) for preventing the transmission of HIV, hepatitis B, and other blood-borne pathogens in health care settings. As necessary, the committee shall consult with the California Medical Board, the Board of Podiatric Medicine, the Board of Dental Examiners, the Board of Registered Nursing, and the Board of Vocational Nursing and Psychiatric Technicians, to encourage appropriate consistency in the implementation of this subdivision.

The committee shall seek to ensure that licensees are informed of the responsibility of licensees and others to follow infection control guidelines, and of the most recent scientifically recognized safeguards for minimizing the risk of transmission of blood-borne infectious diseases.

SEC. 24. Section 3528 of the Business and Professions Code is amended to read:

3528. Any proceedings involving the denial, suspension, or revocation of the application for licensure or the license of a physician assistant, the application for approval or the approval of a supervising physician, or the application for approval or the approval of an approved program under this chapter shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 25. Section 3530 of the Business and Professions Code is amended to read:

3530. One year from the date of a revocation of a license or approval under this chapter, application may be made to the committee or the board in the case of approval of an application to supervise physician assistants for reinstatement, restoration or modification of probation. The committee may accept or reject an application for reinstatement, restoration, or modification of probation and may require an examination for that reinstatement, restoration, or modification of probation when it is deemed appropriate for a license or approval under this chapter.

SEC. 26. Section 3534.1 of the Business and Professions Code is amended to read:

3534.1. The examining committee shall establish and administer a diversion program for the rehabilitation of physician assistants whose competency is impaired due to the abuse of drugs or alcohol. The examining committee may contract with any other state agency or a private organization to perform its duties under this article. The examining committee may establish one or more diversion evaluation committees to assist it in carrying out its duties under this article. As used in this article, "committee" means a diversion evaluation committee.

SEC. 27. Section 3534.3 of the Business and Professions Code is amended to read:

3534.3. Each committee has the following duties and responsibilities:

(a) The evaluation of physician assistants who request participation in the program and to consider any recommendations from professional consultants on the admission of applicants to the diversion program.

(b) The review and designation of treatment facilities to which physician assistants in the diversion program may be referred.

(c) The receipt and review of information concerning physician assistants participating in the program.

(d) To call meetings as necessary to consider the requests of physician assistants to participate in the diversion program, to consider reports regarding participants in the program, and to consider any other matters referred to it by the examining committee.

(e) The consideration of whether each participant in the diversion program may with safety continue or resume the practice of medicine.

(f) To set forth in writing a treatment program for each participant in the diversion program with requirements for supervision and surveillance.

(g) To hold a general meeting at least twice a year, which shall be open and public, to evaluate the diversion program's progress, to prepare reports to be submitted to the examining committee, and to suggest proposals for changes in the diversion program.

(h) For the purposes of Division 3.6 (commencing with Section 810) of Title 1 of the Government Code, any member of a committee shall be considered a public employee. No examining committee or committee member, contractor, or agent thereof, shall be liable for any civil damage because of acts or omissions which may occur while acting in good faith in a program established pursuant to this article.

SEC. 28. Section 4115.5 is added to the Business and Professions Code, to read:

4115.5. (a) Notwithstanding any other provision of law, a pharmacy technician student may be placed in a pharmacy as a pharmacy technician trainee to complete an externship for the purpose of obtaining practical training that is required by the board as a condition of becoming registered as a pharmacy technician. A "pharmacy technician student" is a person who is enrolled in a pharmacy technician training program operated by a California public postsecondary education institution or by a private postsecondary vocational institution approved by the Bureau for Private Postsecondary and Vocational Education.

(b) (1) A pharmacy technician trainee participating in an externship as described in subdivision (a) may perform the duties described in subdivision (a) of Section 4115 only under the immediate, personal supervision and control of a pharmacist. A pharmacist supervising a pharmacy technician trainee shall be on the premises and have the trainee within his or her view at any time the trainee performs the duties described in subdivision (a) of Section 4115.

(2) A pharmacist supervising a pharmacy technician trainee participating in an externship as described in subdivision (a) shall be directly responsible for the conduct of the trainee.

(3) A pharmacist supervising a pharmacy technician trainee participating in an externship as described in subdivision (a) shall verify any prescription prepared by the trainee under supervision of the pharmacist by initialing the prescription label before the medication is disbursed to a patient.

(4) No more than one pharmacy technician trainee per pharmacist may participate in an externship as described in subdivision (a) under the immediate, personal supervision and

control of that pharmacist at any time the trainee is present in the pharmacy.

(5) A pharmacist supervising a pharmacy technician trainee participating in an externship as described in subdivision (a) shall certify attendance for the pharmacy technician trainee and certify that the pharmacy technician trainee has met the educational objectives established by California public postsecondary education institution or the private postsecondary vocational institution in which the trainee is enrolled, as established by the institution.

(c) (1) Except as described in paragraph (2), an externship in which a pharmacy technician trainee is participating as described in subdivision (a) shall be for a period of no more than 120 hours.

(2) When an externship in which a pharmacy technician trainee is participating as described in subdivision (a) involves rotation between a community and hospital pharmacy for the purpose of training the student in distinct practice settings, the externship may be for a period of up to 320 hours. No more than 120 of the 320 hours may be completed in a community pharmacy setting or in a single department in a hospital pharmacy.

(d) An externship in which a pharmacy technician trainee may participate as described in subdivision (a) shall be for a period of no more than six consecutive months, and shall be completed while the trainee is enrolled in a course of instruction at the institution.

(e) A pharmacy technician trainee participating in an externship as described in subdivision (a) shall wear identification that indicates his or her student status.

SEC. 29. Section 4301 of the Business and Professions Code is amended to read:

4301. The board shall take action against any holder of a license who is guilty of unprofessional conduct or whose license has been procured by fraud or misrepresentation or issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the following:

(a) Gross immorality.

(b) Incompetence.

(c) Gross negligence.

(d) The clearly excessive furnishing of controlled substances in violation of subdivision (a) of Section 11153 of the Health and Safety Code.

(e) The clearly excessive furnishing of controlled substances in violation of subdivision (a) of Section 11153.5 of the Health and Safety Code. Factors to be considered in determining whether the furnishing of controlled substances is clearly excessive shall include, but not be limited to, the amount of controlled substances furnished, the previous ordering pattern of the customer (including size and frequency of orders), the type and size of the customer, and where and to whom the customer distributes its product.

(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption, whether the act is committed in the course of relations as a licensee or otherwise, and whether the act is a felony or misdemeanor or not.

(g) Knowingly making or signing any certificate or other document that falsely represents the existence or nonexistence of a state of facts.

(h) The administering to oneself, of any controlled substance, or the use of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, to a person holding a license under this chapter, or to any other person or to the public, or to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license.

(i) Except as otherwise authorized by law, knowingly selling, furnishing, giving away, or administering or offering to sell, furnish, give away, or administer any controlled substance to an addict.

(j) The violation of any of the statutes of this state or of the United States regulating controlled substances and dangerous drugs.

(k) The conviction of more than one misdemeanor or any felony involving the use, consumption, or self-administration of any dangerous drug or alcoholic beverage, or any combination of those substances.

(*l*) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or of a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving controlled substances or dangerous drugs, to determine if the conviction is of an offense substantially related to the qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this provision. The board may take action when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

(m) The cash compromise of a charge of violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code

regulating controlled substances. The record of the compromise is conclusive evidence of unprofessional conduct.

(n) The revocation, suspension, or other discipline by another state of a license to practice pharmacy, operate a pharmacy, or do any other act for which a license is required by this chapter.

(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision or term of this chapter or of the applicable federal and state laws and regulations governing pharmacy, including regulations established by the board.

(p) Actions or conduct that would have warranted denial of a license.

(q) Engaging in any conduct that subverts or attempts to subvert an investigation of the board.

SEC. 30. Section 4301.5 is added to the Business and Professions Code, to read:

4301.5. (a) If a pharmacist possesses a license or is otherwise authorized to practice pharmacy in any other state or by an agency of the federal government, and that license or authority is suspended or revoked, the pharmacist's license shall be suspended automatically for the duration of the suspension or revocation, unless terminated or rescinded as provided in subdivision (c). The board shall notify the pharmacist of the license suspension and of his or her right to have the issue of penalty heard as provided in this section.

(b) Upon its own motion or for good cause shown, the 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 pharmacy profession.

(c) The issue of penalty shall be heard by an administrative law judge sitting alone, by a committee of the board sitting with an administrative law judge, or by the board sitting with an administrative law judge, at the board's discretion. A pharmacist may request a hearing on the penalty and that hearing shall be held within 90 days from the date of the request. If the order suspending or revoking the pharmacist's license or authority to practice pharmacy is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Upon the showing to the administrative law judge, board, or committee of the board by the pharmacist that the out-of-state action is not a basis for discipline in California, the suspension shall be rescinded.

If an accusation for permanent discipline is not filed within 90 days of the suspension imposed pursuant to this section, the suspension shall automatically terminate.

(d) The record of the proceedings that resulted in the suspension or revocation of the pharmacist's license or authority to practice pharmacy, including a transcript of the testimony therein, may be received in evidence.

(e) If a summary suspension has been issued pursuant to this section, the pharmacist may request that the hearing on the penalty conducted pursuant to subdivision (c) be held at the same time as a hearing on the accusation.

SEC. 31. Section 4322 of the Business and Professions Code is amended to read:

4322. Any person who attempts to secure or secures licensure for himself or herself or any other person under this chapter by making or causing to be made any false representations, or who fraudulently represents himself or herself to be registered, is guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding five thousand dollars ($5,000), or by imprisonment not exceeding 50 days, or by both that fine and imprisonment.

SEC. 32. Section 5053 of the Business and Professions Code is amended to read:

5053. Nothing contained in this chapter precludes a person who is not a certified public accountant or public accountant from serving as an employee of, or an assistant to, a certified public accountant or public accountant or partnership or a corporation composed of certified public accountants or public accountants holding a permit to practice pursuant to this chapter if the employee or assistant works under the control and supervision of a certified public accountant, or a public accountant authorized to practice public accountancy pursuant to this chapter and if the employee or assistant does not issue any statement over his or her name.

This section does not apply to an attorney at law in connection with his or her practice of law.

SEC. 33. Section 5055 of the Business and Professions Code is amended to read:

5055. Any person who has received from the board a certificate of certified public accountant may, subject to Section 5051, be styled and known as a "certified public accountant" and may also use the abbreviation "C.P.A." No other person, except a firm registered under this chapter, shall assume or use that title, designation, or abbreviation or any other title, designation, sign, card, or device tending to indicate that the person using it is a certified public accountant.

SEC. 34. Section 5056 of the Business and Professions Code is amended to read:

5056. Any person who has received from the board a certificate of public accountant may, subject to Section 5051, be styled and known as a "public accountant" and may also use the abbreviation "P.A." No other person, except a firm registered under this chapter, shall assume or use that title, designation, or abbreviation or any other title, designation, sign, card, or device tending to indicate that the person using it is a public accountant.

SEC. 35. Section 5058.1 is added to the Business and Professions Code, to read:

5058.1. A person or firm may not use any title or designation in connection with the designation "certified public accountant" or "public accountant" that is false or misleading.

The board may adopt regulations covering the use of titles or designations.

SEC. 36. Section 5059 of the Business and Professions Code is repealed.

SEC. 37. Section 5060 of the Business and Professions Code is amended to read:

5060. (a) No person or firm may practice public accountancy under any name which is false or misleading.

(b) No person or firm may practice public accountancy under any name other than the name under which the person or firm holds a valid permit to practice issued by the board.

(c) Notwithstanding subdivision (b), a sole proprietor may practice under a name other than the name set forth on his or her permit to practice, provided the name is registered by the board, is in good standing, and complies with the requirements of subdivision (a).

(d) The board may adopt regulations to implement, interpret, and make specific the provisions of this section including, but not limited to, regulations designating particular forms of names as being false or misleading.

SEC. 38. Section 5070.1 of the Business and Professions Code is repealed.

SEC. 39. Section 5070.6 of the Business and Professions Code is amended to read:

5070.6. Except as otherwise provided in this chapter, an expired permit may be renewed at any time within five years after its expiration on filing of application for renewal on a form prescribed by the board, payment of all accrued and unpaid renewal fees and on and after December 31, 1974, giving evidence to the board of compliance with the continuing education provisions of this chapter. If the permit is renewed after its expiration, its holder, as a condition precedent to renewal, shall also pay the delinquency fee prescribed by this chapter. Renewal under this section shall be effective on the date on which the application is filed, on the date on which the accrued renewal fees are paid, or on the date on which the delinquency fee, if any, is paid, whichever last occurs. If so renewed, the permit shall continue in effect through the date provided in Section 5070.5 that next occurs after the effective date of the renewal, when it shall expire if it is not again renewed.

SEC. 40. Section 5071 of the Business and Professions Code is repealed.

SEC. 41. Section 5072 of the Business and Professions Code is amended to read:

5072. (a) No persons shall engage in the practice of accountancy as a partnership unless the partnership is registered by the board.

(b) A partnership, other than a limited partnership, may be registered by the board to engage in the practice of public accountancy provided it meets the following requirements:

(1) At least one general partner shall hold a valid permit to practice as a certified public accountant, public accountant, or accountancy corporation, or shall be an applicant for a certificate as a certified public accountant under Sections 5087 and 5088.

(2) Each partner personally engaged within this state in the practice of public accountancy as defined by Section 5051 shall hold a valid permit to practice in this state or shall have applied for a certificate as a certified public accountant under Sections 5087 and 5088.

(3) Each partner not personally engaged in the practice of public accountancy within this state shall be a certified public accountant in good standing of some state, except as permitted by Section 5079.

(4) Each resident manager in charge of an office of the firm in this state shall be a licensee in good standing of this state, or shall have applied for a certificate as a certified public accountant under Sections 5087 and 5088.

SEC. 42. Section 5073 of the Business and Professions Code is amended to read:

5073. (a) Application for registration of a partnership shall be made upon a form prescribed by the board. The board shall in each case determine whether the applicant is eligible for registration.

(b) A partnership that is so registered and that holds a valid permit issued under this article and that has at least one general partner who is licensed to practice using the designation "certified public accountant" or the abbreviation "C.P.A." and one additional licensed person may use the words "certified public accountants" or the abbreviation"C.P.A.s" in connection with its partnership name.

(c) A partnership that is so registered and that holds a valid permit issued under this article and that has at least one general partner who is licensed to practice using the designation "public accountant" or the abbreviation "P.A." and one additional licensed person may use the words "public accountants" or the abbreviation "P.A.s" in connection with its partnership name.

(d) Notification shall be given to the board within one month after the admission to, or withdrawal of, a partner from any partnership so registered.

(e) Any registration of a partnership under this section granted in reliance upon Sections 5087 and 5088 shall terminate forthwith if the board rejects the application under Sections 5087 and 5088 of the general partner who signed the application for registration as a partnership, or any partner personally engaged in the practice of public accountancy in this state, or any resident manager of a partnership in charge of an office in this state.

SEC. 43. Section 5074 of the Business and Professions Code is repealed.

SEC. 44. Section 5075 of the Business and Professions Code is repealed.

SEC. 45. Section 5076 of the Business and Professions Code is repealed.

SEC. 46. Section 5104 of the Business and Professions Code is amended to read:

5104. Any certified public accountant or public accountant whose certificate, registration, or permit has been revoked or suspended shall upon request of the board relinquish his or her certificate or permit. However, upon the expiration of the period of suspension, the board shall immediately return any suspended certificate or permit which has been relinquished.

SEC. 47. Section 5134 of the Business and Professions Code is amended to read:

5134. The amount of fees prescribed by this chapter is as follows:

(a) The fee to be charged to each applicant for the certified public accountant examination shall be fixed by the board at an amount to equal the actual cost to the board of the purchase or development of the written examination, plus the estimated cost to the board of administering the written examination and shall not exceed two hundred fifty dollars ($250). The board may charge a reexamination fee equal to the actual cost to the board of the purchase or development of the written examination or any of its component parts, plus the estimated cost to the board of administering the written examination and not to exceed fifty dollars ($50) for each part that is subject to reexamination.

(b) The fee to be charged to out-of-state candidates for the certified public accountant examination shall be fixed by the board at an amount equal to the estimated cost to the board of administering the examination and shall not exceed one hundred fifty dollars ($150) per candidate.

(c) The application fee to be charged to each applicant for issuance of a certified public accountant certificate shall be fixed by the board at an amount equal to the estimated administrative cost to the board of processing and issuing the certificate and shall not exceed two hundred fifty dollars ($250).

(d) The application fee to be charged to each applicant for issuance of a certified public accountant certificate by waiver of examination shall be fixed by the board at an amount equal to the estimated administrative cost to the board of processing and issuing the certificate and shall not exceed two hundred fifty dollars ($250).

(e) The fee to be charged to each applicant for registration shall be fixed by the board and shall not exceed one hundred fifty dollars ($150).

(f) The board shall fix the biennial renewal fee so that, together with the estimated amount from revenue other than that generated

by subdivisions (a) to (d), inclusive, the reserve balance in the board's contingent fund shall be equal to approximately three months of annual authorized expenditures. Any increase in the renewal fee made after July 1, 1990, shall be effective upon a determination by the board, by regulation adopted pursuant to subdivision (k), that additional moneys are required to fund authorized expenditures other than those specified in subdivisions (a) to (d), inclusive, and maintain the board's contingent fund reserve balance equal to three months of estimated annual authorized expenditures in the fiscal year in which the expenditures will occur. The biennial fee for the renewal of each of the permits to engage in the practice of public accountancy specified in Section 5070 shall not exceed two hundred fifty dollars ($250).

(g) The delinquency fee shall be 50 percent of the accrued renewal fee.

(h) The initial permit fee is an amount equal to the renewal fee in effect on the last regular renewal date before the date on which the permit is issued, except that, if the permit is issued one year or less before it will expire, then the initial permit fee is an amount equal to 50 percent of the renewal fee in effect on the last regular renewal date before the date on which the permit is issued. The board may, by regulation, provide for the waiver or refund of the initial permit fee where the permit is issued less than 45 days before the date on which it will expire.

(i) The fee to be charged for filing of sponsor agreements for continuing education courses shall be fixed by the board at not more than one hundred dollars ($100). Universities, colleges, or other four-year institutions of learning accredited by a regional or national accrediting agency or association included in a list of those agencies or associations published by the United States Commissioner of Education under the requirements of Section 253 of the Veterans' Readjustment Assistance Act of 1952, known as Public Law 550 of the 82nd Congress, as amended, are exempted from the payment of this filing fee.

(j) The actual and estimated costs referred to in this section shall be calculated every two years using a survey of all costs attributable to the applicable subdivision.

(k) Upon the effective date of this section the board shall fix the fees in accordance with the limits of this section and, on and after July 1, 1990, any increase in any fee fixed by the board shall be pursuant to regulation duly adopted by the board in accordance with the limits of this section.

(*l*) Fees collected pursuant to subdivisions (a) to (d), inclusive, shall be fixed by the board in amounts necessary to recover the actual costs of providing the service for which the fee is assessed, as projected for the fiscal year commencing on the date the fees become effective.

SEC. 48. Section 5153 of the Business and Professions Code is repealed.

SEC. 48.1. Section 7301 of the Business and Professions Code is amended to read:

7301. This chapter constitutes the chapter on hair, skin, nail care, and electrolysis and may be known and cited as the Barbering and Cosmetology Act.

The term "board" as used in this chapter refers to the Director of the Department of Consumer Affairs, or his or her designee, as provided in this chapter.

SEC. 48.2. Section 7303 of the Business and Professions Code is repealed.

SEC. 48.3. Section 7348 of the Business and Professions Code is amended to read:

7348. An establishment shall at all times be in the charge of a person licensed pursuant to this chapter except an apprentice.

SEC. 48.4. Section 7358 of the Business and Professions Code is amended to read:

7358. A mobile unit shall at all times be in the charge of a person licensed pursuant to this chapter except an apprentice.

SEC. 48.5. Section 7362.1 of the Business and Professions Code is amended to read:

7362.1. A school of cosmetology approved by the board shall also meet all of the following:

(a) Possess the equipment and floor space necessary for comprehensive instruction of 25 cosmetology students or the number of students enrolled in the course, whichever is greater.

(b) Have entered on the roll of a proposed school of cosmetology at least 25 bona fide, full-time students for the cosmetology course. For purposes of this section, a bona fide, full-time student is a person who has been entered on the roll of a proposed school of cosmetology and has committed to attend a full course in cosmetology.

(c) Maintain a course of practical training and technical instruction for the full cosmetology course as specified in this chapter and in board regulations. A course of instruction in any branch of cosmetology shall be taught in a school of cosmetology.

SEC. 48.6. Section 7362.2 of the Business and Professions Code is amended to read:

7362.2. A school of barbering approved by the board shall also do all of the following:

(a) Possess the equipment and floor space necessary for comprehensive instruction of 15 barber students or the number of students enrolled in the course, whichever is greater.

(b) Have entered on the roll of a proposed school of barbering at least 15 bona fide, full-time students for the barbering course. For purposes of this section, a bona fide, full-time student is a person who has been entered on the roll of a proposed school of barbering and has committed to attend a full course in barbering.

(c) Maintain a course of practical training and technical instruction for the full barbering course as specified in this chapter and in board regulations.

SEC. 48.7. Section 7362.3 of the Business and Professions Code is amended to read:

7362.3. A school of electrology approved by the board shall also do all of the following:

(a) Possess the equipment and floor space necessary for comprehensive instruction of five electrology students or the number of students enrolled in the course, whichever is greater.

(b) Have entered on the roll of a proposed school of electrology at least five bona fide, full-time students for the electrology course. For purposes of this section, a bona fide, full-time student is a person who has been entered on the roll of a proposed school of electrology and has committed to attend a full course in electrology.

(c) Maintain a course of practical training and technical instruction for the full electrology course as specified in this chapter and in board regulations.

SEC. 48.8. Section 7390 of the Business and Professions Code is amended to read:

7390. A cosmetology or barbering instructor training course shall consist of not less than 600 hours of practical training and technical instruction in accordance with a curriculum established by board regulation.

SEC. 48.9. Section 7391 of the Business and Professions Code is amended to read:

7391. The board shall admit to examination for license as a cosmetology or barbering instructor any person who has made application to the board in the proper form, who has paid the fee required by this chapter, and who meets the following qualifications:

(a) Has completed the 12th grade or an accredited senior high school course of study in public schools of this state or its equivalent.

(b) Is not subject to denial pursuant to Section 480.

(c) Holds a valid license to practice cosmetology or barbering in this state.

(d) Has done at least one of the following:

(1) Completed a cosmetology or barbering instructor training course in an approved school in this state or equivalent training in an approved school in another state.

(2) Completed not less than the equivalent of 10 months of practice as a teacher assistant or teacher aide in a school approved by the board.

(3) Practiced cosmetology or barbering in a licensed establishment in this state for a period of one year within the three years immediately preceding application, or its equivalent in another state. An applicant using practical experience to qualify under this section shall submit an affidavit signed by his or her employers attesting to the qualifying experience.

SEC. 48.10. Section 7392 of the Business and Professions Code is amended to read:

7392. Each licensed instructor shall complete at least 30 clock hours of continuing education in the teaching of vocational education during each two-year licensing period. This section does not apply to an instructor who holds a credential to teach vocational education full time in a public school in this state.

For purposes of this section, programs designed for continuing education in the teaching of vocational education may include, but not be limited to, development of understanding and competency in the learning process, instructional techniques, curriculum and media, instructional evaluation, counseling and guidance, and the special needs of students.

The board shall adopt regulations establishing standards for the approval of continuing education courses and for the effective administration and enforcement of its continuing education requirements.

SEC. 48.11. Section 7393 of the Business and Professions Code is amended to read:

7393. As a condition of the renewal of the license of an instructor, the board may periodically require instructors to demonstrate current competence through continuing education as provided for in this chapter.

SEC. 48.12. Section 7394 of the Business and Professions Code is amended to read:

7394. The board's continuing education requirements shall not apply to instructors whose licenses are on inactive status according to the records maintained by the board.

Instructors whose licenses are on inactive status may not be employed as instructors in schools approved by the board.

Instructors whose licenses are on inactive status must complete at least 30 hours of continuing education in the teaching of vocational education as a condition of reinstatement to active status.

SEC. 48.13. Section 7395 of the Business and Professions Code is amended to read:

7395. If an instructor with an active license status does not provide proof of compliance with the continuing education requirements provided for in this chapter within 45 days of a request from the board, the instructor's license shall revert to inactive status until proof of compliance is provided to the board.

SEC. 48.14. Section 7423.5 of the Business and Professions Code is amended to read:

7423.5. The amounts of the fees payable under this chapter relating to licenses for instructor are as follows:

(a) The fee for instructor application, examination, and initial license shall be not more than fifty dollars ($50).

(b) The license renewal fee shall be not more than fifty dollars ($50).

(c) The license renewal delinquency fee shall be 50 percent of the renewal fee in effect on the date of renewal, notwithstanding Section 163.5.

SEC. 48.15. Section 7427 is added to the Business and Professions Code, to read:

7427. This chapter shall become inoperative on July 1, 2005, and, as of January 1, 2006, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2005, deletes or extends the date on which it becomes inoperative and is repealed. This chapter is subject to the review required by Division 1.2 (commencing with Section 473).

SEC. 49. Section 7622.3 of the Business and Professions Code is amended to read:

7622.3. The program shall adopt regulations requiring continuing education of 14 hours every two years for licensed funeral directors. As a condition of renewal, every funeral director shall certify to the program that he or she has successfully completed 14 hours of continuing education on or before December 31, 2000, and shall certify to the program that he or she has successfully completed 14 hours of continuing education on or after December 31 of every even-numbered year thereafter.

SEC. 50. Section 7651 of the Business and Professions Code is amended to read:

7651. The program shall adopt regulations requiring continuing education of 14 hours every two years for licensed embalmers. As a condition of renewal, every embalmer shall certify to the program that he or she has successfully completed 14 hours of continuing education on or before December 31, 2000, and shall certify to the program that he or she has successfully completed 14 hours of continuing education on or after December 31 of every even-numbered year thereafter.

SEC. 52. Section 8742 of the Business and Professions Code is amended to read:

8742. (a) The educational qualifications and experience in land surveying, which an applicant for the second division examination shall possess, shall not be less than one of the following prescribed criteria:

(1) Graduation from a four-year curriculum with an emphasis in land surveying approved by the board or accredited by a national or regional accrediting agency recognized by the United States Office of Education at a postsecondary educational institution and two years of actual broad based progressive experience in land surveying, including one year of responsible field training and one year of responsible office training, satisfactory to the board.

(2) Actual broad based progressive experience in land surveying for at least six years, including one year of responsible field training and one year of responsible office training, satisfactory to the board.

(3) Registration as a civil engineer with two years of actual broad based progressive experience in land surveying satisfactory to the board.

(b) With respect to an applicant for a license as a land surveyor, the board shall count one year of postsecondary education in land surveying as one year of experience in land surveying up to a maximum of four years, provided the applicant has graduated from the course in land surveying and the curriculum in land surveying is approved by the board or is accredited by a regional or national accrediting agency recognized for the purpose by the United States Office of Education. Each year of study in an approved or an accredited course in land surveying without graduation shall be counted the same as one-half year of experience.

Each applicant claiming equivalent credit for education may be required to produce a complete transcript of all college level courses completed.

Until January 1, 2000, the board may, at its discretion, confer credit as experience in land surveying, not in excess of two years, for successfully passing the first division of the examination prescribed in Section 8741.

SEC. 53. Section 8773.1 of the Business and Professions Code is amended to read:

8773.1. The board shall by regulation provide and prescribe the information which shall be necessary to be included in the corner record and the board shall prescribe the form in which such corner record shall be submitted and filed, and the time limits within which the form shall be filed.

SEC. 54. Section 8773.2 of the Business and Professions Code is amended to read:

8773.2. (a) A "corner record" submitted to the county surveyor or engineer shall be examined by him or her for compliance with subdivision (d) of Section 8765 and Sections 8773, 8773.1, and 8773.4, endorsed with a statement of his or her examination, and filed with the county surveyor or returned to the submitting party within 20 working days after receipt.

(b) In the event the submitted "corner record" fails to comply with the examination criteria of subdivision (a), the county surveyor or engineer shall return it to the person who submitted it together with a written statement of the changes necessary to make it conform to the requirements of subdivision (a). The licensed land surveyor or registered civil engineer submitting the corner record may then make the changes in compliance with subdivision (a) and resubmit the corner record for filing. The county surveyor or engineer shall file the corner record within 10 working days after receipt of the resubmission.

(c) If the matters appearing on the corner record cannot be agreed upon by the licensed land surveyor or the registered civil engineer and the county surveyor within 10 working days after the

licensed land surveyor or registered civil engineer resubmits and requests the corner record be filed without further change, an explanation of the differences shall be noted on the corner record and it shall be submitted to and filed by the county surveyor. When the county surveyor places an explanatory note on a corner record, the county surveyor shall transmit a copy of the filed corner record within 10 working days of the filing to the licensed land surveyor or registered civil engineer who submitted the corner record.

(d) The corner record filed with the county surveyor of any county shall be securely fastened by him or her into a suitable book provided for that purpose.

(e) A charge for examining, indexing, and filing the corner record may be collected by the county surveyor, not to exceed the amount required for the recording of a deed.

SEC. 55. Section 13660 of the Business and Professions Code is amended to read:

13660. (a) Every person, firm, partnership, association, trustee, or corporation that operates a service station shall provide, upon request, refueling service to a disabled driver of a vehicle that displays a disabled person's plate or placard, or a disabled veteran's plate, issued by the Department of Motor Vehicles. The price charged for the motor vehicle fuel shall be no greater than that which the station otherwise would charge the public generally to purchase motor vehicle fuel without refueling service.

(b) Any person or entity specified in subdivision (a) that operates a service station shall be exempt from this section during hours when:

(1) Only one employee is on duty.

(2) Only two employees are on duty, one of whom is assigned exclusively to the preparation of food.

As used in this subdivision, the term "employee" does not include a person employed by an unrelated business that is not owned or operated by the entity offering motor vehicle fuel for sale to the general public.

(c) (1) Every person, firm, partnership, association, trustee, or corporation required to provide refueling service for persons with disabilities pursuant to this section shall post the following notice in a manner and single location that is conspicuous to a driver seeking refueling service:

"Service to Disabled Persons

Disabled individuals properly displaying a disabled person's plate or placard, or a disabled veteran's plate, issued by the Department of Motor Vehicles, are entitled to request and receive refueling service at this service station for which they may not be charged more than the self-service price. For information regarding enforcement of laws providing for access to refueling services for persons with disabilities, you may call the California Assistive Technology System

at (800) 390-2699.''

(2) If refueling service is limited to certain hours pursuant to an exemption set forth in subdivision (b), the notice required by paragraph (1) shall also specify the hours during which refueling service for persons with disabilities is available.

(3) Every person, firm, partnership, association, trustee, or corporation that, consistent with subdivision (b), does not provide refueling service for persons with disabilities during any hours of operation shall post the following notice in a manner and single location that is conspicuous to a driver seeking refueling service:

''No Service for Disabled Persons

This service station does not provide refueling service for disabled individuals. For information regarding enforcement of laws providing for access to refueling services for persons with disabilities, you may call the California Assistive Technology System at (800) 390-2699.''

(d) During the county sealer's normal petroleum product inspection of a service station, the sealer shall verify that a sign has been posted in accordance with subdivision (c). If a sign has not been posted, the sealer shall issue a notice of violation to the owner or agent. The sealer shall be reimbursed, as prescribed by the department, from funds provided under Chapter 14. If substantial, repeated violations of subdivision (c) are noted at the same service station, the sealer shall refer the matter to the appropriate local law enforcement agency.

(e) The local law enforcement agency shall, upon the verified complaint of any person or public agency, investigate the actions of any person, firm, partnership, association, trustee, or corporation alleged to have violated this section. If the local law enforcement agency determines that there has been a denial of service in violation of this section, or a substantial or repeated failure to comply with subdivision (c), the agency shall levy the fine prescribed in subdivision (f).

(f) Any person who, as a responsible managing individual setting service policy of a service station, or as an employee acting independently against the set service policy, acts in violation of this section is guilty of an infraction punishable by a fine of one hundred dollars ($100) for the first offense, two hundred dollars ($200) for the second offense, and five hundred dollars ($500) for each subsequent offense.

(g) In addition to those matters referred pursuant to subdivision (e), the city attorney, the district attorney, or the Attorney General, upon his or her own motion, may investigate and prosecute alleged violations of this section. Any person or public agency may also file

a verified complaint alleging violation of this section with the city attorney, district attorney, or Attorney General.

(h) Enforcement of this section may be initiated by any intended beneficiary of the provisions of this section, his or her representatives, or any public agency that exercises oversight over the service station, and the action shall be governed by Section 1021.5 of the Code of Civil Procedure.

(i) An annual notice setting forth the provisions of this section shall be provided by the Board of Equalization to every person, firm, partnership, association, trustee, or corporation that operates a service station.

(j) A notice setting forth the provisions of this section shall be printed on each disabled person's placard issued by the Department of Motor Vehicles on and after January 1, 1999. A notice setting forth the provisions of this section shall be provided to each person issued a disabled person's or disabled veteran's plate on and after January 1, 1998.

(k) For the purposes of this action "refueling service" means the service of pumping motor vehicle fuel into the fuel tank of a motor vehicle.

SEC. 56. Section 11371 of the Government Code is amended to read:

11371. (a) There is within the Office of Administrative Hearings a Medical Quality Hearing Panel, consisting of no fewer than five full-time administrative law judges. The administrative law judges shall have medical training as recommended by the Division of Medical Quality of the Medical Board of California and approved by the Director of the Office of Administrative Hearings.

(b) The director shall determine the qualifications of panel members, supervise their training, and coordinate the publication of a reporter of decisions pursuant to this section. The panel shall include only those persons specifically qualified and shall at no time constitute more than 25 percent of the total number of administrative law judges within the Office of Administrative Hearings. If the members of the panel do not have a full workload, they may be assigned work by the Director of the Office of Administrative Hearings. When the medically related case workload exceeds the capacity of the members of the panel, additional judges shall be requested to be added to the panels as appropriate. When this workload overflow occurs on a temporary basis, the Director of the Office of Administrative Hearings shall supply judges from the Office of Administrative Hearings to adjudicate the cases.

(c) The decisions of the administrative law judges of the panel, together with any court decisions reviewing those decisions, shall be published in a quarterly "Medical Discipline Report," to be funded from the Contingent Fund of the Medical Board of California.

(d) The administrative law judges of the panel shall have panels of experts available. The panels of experts shall be appointed by the

Director of the Office of Administrative Hearings, with the advice of the Medical Board of California. These panels of experts may be called as witnesses by the administrative law judges of the panel to testify on the record about any matter relevant to a proceeding and subject to cross-examination by all parties, and Section 11430.30 does not apply in a proceeding under this section. The administrative law judge may award reasonable expert witness fees to any person or persons serving on a panel of experts, which shall be paid from the Contingent Fund of the Medical Board of California.

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

SEC. 57. Section 11529 of the Government Code is amended to read:

11529. (a) The administrative law judge of the Medical Quality Hearing Panel established pursuant to Section 11371 may issue an interim order suspending a license, or imposing drug testing, continuing education, supervision of procedures, or other license restrictions. Interim orders may be issued only if the affidavits in support of the petition show that the licensee has engaged in, or is about to engage in, acts or omissions constituting a violation of the Medical Practice Act or the appropriate practice act governing each allied health profession, or is unable to practice safely due to a mental or physical condition, and that permitting the licensee to continue to engage in the profession for which the license was issued will endanger the public health, safety, or welfare.

(b) All orders authorized by this section shall be issued only after a hearing conducted pursuant to subdivision (d), unless it appears from the facts shown by affidavit that serious injury would result to the public before the matter can be heard on notice. Except as provided in subdivision (c), the licensee shall receive at least 15 days' prior notice of the hearing, which notice shall include affidavits and all other information in support of the order.

(c) If an interim order is issued without notice, the administrative law judge who issued the order without notice shall cause the licensee to be notified of the order, including affidavits and all other information in support of the order by a 24-hour delivery service. That notice shall also include the date of the hearing on the order, which shall be conducted in accordance with the requirement of subdivision (d), not later than 20 days from the date of issuance. The order shall be dissolved unless the requirements of subdivision (a) are satisfied.

(d) For the purposes of the hearing conducted pursuant to this section, the licentiate shall, at a minimum, have the following rights:

(1) To be represented by counsel.

(2) To have a record made of the proceedings, copies of which may be obtained by the licentiate upon payment of any reasonable charges associated with the record.

(3) To present written evidence in the form of relevant declarations, affidavits, and documents.

The discretion of the administrative law judge to permit testimony at the hearing conducted pursuant to this section shall be identical to the discretion of a superior court judge to permit testimony at a hearing conducted pursuant to Section 527 of the Code of Civil Procedure.

(4) To present oral argument.

(e) Consistent with the burden and standards of proof applicable to a preliminary injunction entered under Section 527 of the Code of Civil Procedure, the administrative law judge shall grant the interim order where, in the exercise of discretion, the administrative law judge concludes that:

(1) There is a reasonable probability that the petitioner will prevail in the underlying action.

(2) The likelihood of injury to the public in not issuing the order outweighs the likelihood of injury to the licensee in issuing the order.

(f) In all cases where an interim order is issued, and an accusation is not filed and served pursuant to Sections 11503 and 11505 within 15 days of the date in which the parties to the hearing on the interim order have submitted the matter, the order shall be dissolved.

Upon service of the accusation the licensee shall have, in addition to the rights granted by this section, all of the rights and privileges available as specified in this chapter. If the licensee requests a hearing on the accusation, the board shall provide the licensee with a hearing within 30 days of the request, unless the licensee stipulates to a later hearing, and a decision within 15 days of the date the decision is received from the administrative law judge, or the board shall nullify the interim order previously issued, unless good cause can be shown by the Division of Medical Quality for a delay.

(g) Where an interim order is issued, a written decision shall be prepared within 15 days of the hearing, by the administrative law judge, including findings of fact and a conclusion articulating the connection between the evidence produced at the hearing and the decision reached.

(h) Notwithstanding the fact that interim orders issued pursuant to this section are not issued after a hearing as otherwise required by this chapter, interim orders so issued shall be subject to judicial review pursuant to Section 1094.5 of the Code of Civil Procedure. The relief which may be ordered shall be limited to a stay of the interim order. Interim orders issued pursuant to this section are final interim orders and, if not dissolved pursuant to subdivision (c) or (f), may only be challenged administratively at the hearing on the accusation.

(i) The interim order provided for by this section shall be:

(1) In addition to, and not a limitation on, the authority to seek injunctive relief provided for in the Business and Professions Code.

(2) A limitation on the emergency decision procedure provided in Article 13 (commencing with Section 11460.10) of Chapter 4.5.

SEC. 58. Section 11166 of the Health and Safety Code is amended to read:

11166. No person shall fill a prescription for a controlled substance classified in Schedule II 14 or more days after the date written on the prescription by the prescriber. No person shall knowingly fill a mutilated or forged or altered prescription for a controlled substance except for the addition of the address of the person for whom the controlled substance is prescribed as provided by paragraph (3) of subdivision (b) of Section 11164.

SEC. 59. Section 11167 of the Health and Safety Code is repealed.

SEC. 60. Section 11167 is added to the Health and Safety Code, to read:

11167. Notwithstanding subdivision (a) of Section 11164, in an emergency where failure to issue a prescription may result in loss of life or intense suffering, an order for a Schedule II controlled substance may be dispensed on an oral, written, or electronic data transmission order, subject to all of the following requirements:

(a) The order contains all information required by subdivision (a) of Section 11164.

(b) Any written order is signed and dated by the prescriber in indelible pencil or ink, and the pharmacy reduces any oral or electronic data transmission order to writing prior to actually dispensing the controlled substance.

(c) The prescriber provides a triplicate prescription, completed as provided by subdivision (a) of Section 11164, by the seventh day following the transmission of the initial order; a postmark by the seventh day following transmission of the initial order shall constitute compliance.

(d) If the prescriber fails to comply with subdivision (b), the pharmacy shall so notify the Bureau of Narcotic Enforcement in writing within 144 hours of the prescriber's failure to do so and shall make and retain a written, readily retrievable record of the prescription, including the date and method of notification of the Bureau of Narcotic Enforcement.

SEC. 61. 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 879

An act to amend Sections 1207, 1264, 2532.2, 2960, 2960.1, 3356, 4826.1, 4980.40, 4980.80, 4980.90, 4982.25, 4984.1, 4984.4, 4984.7, 4986.70, 4986.80, 4992.36, 4996.3, 4996.4, 4996.6, 4996.7, 5615, 5616, 5621, 5622, 5624, 5626, 5629, 5630, 5640, 5641, 5642, 5644, 5652, 5653, 5654, 5655, 5656, 5657, 5659, 5660, 5662, 5665, 5666, 5667, 5668, 5669, 5670, 5671, 5672, 5673, 5676, 5678.5, 5679.5, 5680, 5680.05, 5680.1, 5680.2, 5681, 7536, 8698.6, 9880.1, 9882.5, 9884.7, 13660, and 18643 of, to add Sections 138, 2532.3, 2532.5, 4980.31, 4984.8, 4986.41, 4986.82, 4997, 5675.5, and 22448 to, to repeal Sections 5677, 5678, and 5679 of, and to repeal Article 10 (commencing with Section 9889.30) of Chapter 20.3 of Division 3 of, the Business and Professions Code, to amend Sections 8214.1, 8214.15, 8219.5, and 8223 of the Government Code, and to amend Section 803 of the Penal Code, relating to professions, and making an appropriation therefor.

[Approved by Governor September 26, 1998. Filed with Secretary of State September 28, 1998.]

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

SECTION 1. Section 138 is added to the Business and Professions Code, to read:

138. (a) Every board in the department, as defined in Section 22, shall initiate the process of adopting regulations on or before June 30, 1999, to require its licentiates, as defined in Section 23.8, to provide notice to their clients or customers that the practitioner is licensed by this state. A board shall be exempt from the requirement to adopt regulations pursuant to this section if the board has in place, in statute or regulation, a requirement that provides for consumer notice of a practitioner's status as a licensee of this state.

(b) Every board, as defined in Section 22, shall submit to the director on or before December 31, 1999, its method for ensuring that every licensing examination administered by or pursuant to contract with the board is subject to periodic evaluation. The evaluation shall include (1) a description of the occupational analysis serving as the basis for the examination; (2) sufficient item analysis data to permit a psychometric evaluation of the items; and (3) an assessment of the appropriateness of prerequisites for admittance to the examination.

The evaluation shall be revised and a new evaluation submitted to the director whenever, in the judgment of the board, there is a substantial change in the examination or the prerequisites for admittance to the examination.

(c) The evaluation may be conducted by the board, or pursuant to a contract with a qualified private testing firm. A board that provides for development or administration of a licensing examination pursuant to contract with a public or private entity may rely on an occupational analysis or item analysis conducted by that entity.

SEC. 1.1. Section 1207 of the Business and Professions Code is amended to read:

1207. (a) As used in this chapter, "clinical chemist," or "clinical microbiologist," or "clinical toxicologist," or "clinical genetic molecular biologist," or "clinical cytogeneticist," or "oral and maxillofacial pathologist" means any person licensed by the department under Section 1264 to engage in, or supervise others engaged in, clinical laboratory practice limited to his or her area of specialization or to direct a clinical laboratory, or portion thereof, limited to his or her area of specialization. Such a licensed person who is qualified under CLIA may perform clinical laboratory tests or examinations classified as of high complexity under CLIA, and the duties and responsibilities of a laboratory director, technical consultant, clinical consultant, technical supervisor, and general supervisor, as specified under CLIA, limited to his or her area of specialty or subspecialty as described in subdivision (b), and shall only direct a clinical laboratory providing service within those specialties or subspecialties. A person licensed as a "clinical chemist," or "clinical microbiologist," or "clinical toxicologist," or "clinical genetic molecular biologist," or "clinical cytogeneticist," or "oral and maxillofacial pathologist" may perform any clinical laboratory test or examination classified as waived or of moderate complexity under CLIA.

(b) The specialty or subspecialty for each of the limited license categories identified in subdivision (a), and the clinical laboratories that may be directed by persons licensed in each of those categories, are the following:

(1) For a person licensed under this chapter as a clinical chemist, the specialty of chemistry and the subspecialties of routine chemistry, endocrinology, clinical microscopy, toxicology, or other specialty or subspecialty specified by regulation adopted by the department.

(2) For a person licensed under this chapter as a clinical microbiologist, the specialty of microbiology and the subspecialties of bacteriology, mycobacteriology, mycology, parasitology, virology, molecular biology, and serology for diagnosis of infectious diseases, or other specialty or subspecialty specified by regulation adopted by the department.

(3) For a person licensed under this chapter as a clinical toxicologist, the subspecialty of toxicology within the specialty of chemistry or other specialty or subspecialty specified by regulation adopted by the department.

(4) For a person licensed under this chapter as a clinical genetic molecular biologist, the subspecialty of molecular biology related to diagnosis of human genetic abnormalities within the specialty of genetics or other specialty or subspecialty specified by regulation adopted by the department.

(5) For a person licensed under this chapter as a clinical cytogeneticist, the subspecialty of cytogenetics within the specialty of genetics or other specialty or subspecialty specified by regulation adopted by the department.

(6) For a person licensed under this chapter as an oral and maxillofacial pathologist, the subspecialty of oral pathology within the specialty of pathology or other specialty or subspecialty specified by regulation adopted by the department.

SEC. 1.15. Section 1264 of the Business and Professions Code is amended to read:

1264. The department shall issue a clinical chemist, clinical microbiologist, clinical toxicologist, clinical molecular biologist, or clinical cytogeneticist license to each person who has applied for the license on forms provided by the department, who is a lawful holder of a master of science or doctoral degree in the specialty for which the applicant is seeking a license and who has met such additional reasonable qualifications of training, education, and experience as the department may establish by regulations. The department shall issue an oral and maxillofacial pathologist license to every applicant for licensure who has applied for the license on forms provided by the department, who is a registered Diplomate of the American Board of Oral and Maxillofacial Pathology, and who meets any additional and reasonable qualifications of training, education, and experience as the department may establish by regulation.

(a) The graduate education shall have included 30 semester hours of coursework in the applicant's specialty. Applicants possessing only a master of science degree shall have the equivalent of one year of full-time, directed study or training in procedures and principles involved in the development, modification or evaluation of laboratory methods, including training in complex methods applicable to diagnostic laboratory work. Each applicant must have had one year of training in his or her specialty in a clinical laboratory acceptable to the department and three years of experience in his or her specialty in a clinical laboratory, two years of which must have been at a supervisory level. The education shall have been obtained in one or more established and reputable institutions maintaining standards equivalent, as determined by the department, to those institutions accredited by an agency acceptable to the department. The department shall determine by examination that the applicant

is properly qualified. Examinations, training, or experience requirements for specialty licenses shall cover only the specialty concerned.

(b) The department may issue licenses without examination to applicants who have passed examinations of other states or national accrediting boards whose requirements are equal to or greater than those required by this chapter and regulations established by the department. The evaluation of other state requirements or requirements of national accrediting boards shall be carried out by the department with the assistance of representatives from the licensed groups. This section shall not apply to persons who have passed an examination by another state or national accrediting board prior to the establishment of requirements that are equal to or exceed those of this chapter or regulations of the department.

(c) The department may issue licenses without examination to applicants who had met standards of education and training, defined by regulations, prior to the date of the adoption of implementing regulations.

(d) The department shall adopt regulations to conform to this section.

SEC. 1.2. Section 2532.2 of the Business and Professions Code is amended to read:

2532.2. To be eligible for licensure by the board as a speech-language pathologist or audiologist, the applicant shall possess all of the following qualifications:

(a) Possess at least a master's degree in speech-language pathology or audiology from an educational institution approved by the board or qualifications deemed equivalent by the board.

(b) Submit transcripts from an educational institution approved by the board evidencing the successful completion of at least 60 semester units of courses related to the normal development, function, and use of speech, hearing, and language; and courses that provide information about, and training in, the management of speech, hearing, and language disorders. At least 24 of the required 60 semester units shall be related to disorders of speech, voice, or language for speech-language pathology applicants or to disorders of hearing and the modification of communication disorders involving speech and language resulting from hearing disorders for audiology applicants. These 60 units do not include credit for thesis, dissertation, or clinical practice.

(c) Submit evidence of the satisfactory completion of supervised clinical practice with individuals representative of a wide spectrum of ages and communication disorders. The board shall establish by regulation the required number of clock hours, not to exceed 300 clock hours, of supervised clinical practice necessary for the applicant.

The clinical practice shall be under the direction of an educational institution approved by the board.

(d) Submit evidence of no less than 36 weeks of satisfactorily completed supervised professional full-time experience or 72 weeks of professional part-time experience obtained under the supervision of a licensed speech-language pathologist or audiologist or a speech-language pathologist or audiologist having qualifications deemed equivalent by the board. This experience shall be evaluated and approved by the board. Any experience to be obtained in a setting which is not exempt from the licensure requirements under Section 2530.5 shall be approved in advance by the board. The required professional experience shall follow completion of the requirements listed in subdivisions (a), (b), and (c). Full time is defined as at least 36 weeks in a calendar year and a minimum of 30 hours per week. Part time is defined as a minimum of 72 weeks and a minimum of 15 hours per week.

(e) Pass an examination or examinations approved by the board. The board shall determine the subject matter and scope of the examinations and may waive the examination upon evidence that the applicant has successfully completed an examination approved by the board. Written examinations may be supplemented by such oral examinations as the board shall determine. An applicant who fails his or her examination may be reexamined at a subsequent examination upon payment of the reexamination fee required by this chapter.

A speech-language pathologist or audiologist who holds a license from another state or territory of the United States or who holds equivalent qualifications as determined by the board and who has completed no less than one year of full-time continuous employment as a speech-language pathologist or audiologist within the past three years is exempt from the supervised professional experience in subdivision (d).

SEC. 1.3. Section 2532.3 is added to the Business and Professions Code, to read:

2532.3. (a) Upon approval of an application filed pursuant to Section 2532.1, and upon the payment of the fee prescribed by subdivision (g) of Section 2534.2, the board may issue a temporary license for a period of six months from the date of issuance to a speech-language pathologist or audiologist who holds an unrestricted license from another state or territory of the United States or who holds equivalent qualifications as determined by the board and has made application to the board for a license in this state.

(b) A temporary license shall terminate upon notice thereof by certified mail, return receipt requested, if it is issued by mistake or if the application for permanent licensure is denied.

(c) Upon written application, the board may reissue a temporary license to any person who has applied for a regular renewable license pursuant to Section 2532.1, and who, in the judgment of the board, has been excusably delayed in completing his or her application or the minimum requirements for a regular license. The board may not reissue a temporary license more than twice to any one person.

SEC. 1.4. Section 2532.5 is added to the Business and Professions Code, to read:

2532.5. Every person holding a license under this chapter shall display it conspicuously in his or her primary place of practice.

SEC. 2. Section 2960 of the Business and Professions Code is amended to read:

2960. The board may refuse to issue any registration or license, or may issue a registration or license with terms and conditions, or may suspend or revoke the registration or license of any registrant or licensee if the applicant, registrant, or licensee has been guilty of unprofessional conduct. Unprofessional conduct shall include, but not be limited to:

(a) Conviction of a crime substantially related to the qualifications, functions or duties of a psychologist or psychological assistant.

(b) Use of any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or dangerous drug, or any alcoholic beverage to an extent or in a manner dangerous to himself or herself, any other person, or the public, or to an extent that this use impairs his or her ability to perform the work of a psychologist with safety to the public.

(c) Fraudulently or neglectfully misrepresenting the type or status of license or registration actually held.

(d) Impersonating another person holding a psychology license or allowing another person to use his or her license or registration.

(e) Using fraud or deception in applying for a license or registration or in passing the examination provided for in this chapter.

(f) Paying, or offering to pay, accepting, or soliciting any consideration, compensation, or remuneration, whether monetary or otherwise, for the referral of clients.

(g) Violating Section 17500.

(h) Willful, unauthorized communication of information received in professional confidence.

(i) Violating any rule of professional conduct promulgated by the board and set forth in regulations duly adopted under this chapter.

(j) Being grossly negligent in the practice of his or her profession.

(k) Violating any of the provisions of this chapter or regulations duly adopted thereunder.

(*l*) The aiding or abetting of any person to engage in the unlawful practice of psychology.

(m) The suspension, revocation or imposition of probationary conditions by another state or country of a license or certificate to practice psychology or as a psychological assistant issued by that state or country to a person also holding a license or registration issued under this chapter if the act for which the disciplinary action was taken constitutes a violation of this section.

(n) The commission of any dishonest, corrupt, or fraudulent act.

(o) On and after January 1, 2001, any act of sexual abuse, or sexual relations with a patient, or sexual misconduct that is substantially related to the qualifications, functions, or duties of a psychologist or psychological assistant.

(p) Commencing January 1, 1999, until January 1, 2001, any act of sexual abuse, or sexual relations with a patient or former patient within two years following termination of therapy, or sexual misconduct which is substantially related to the qualifications, functions or duties of a psychologist or psychological assistant or registered psychologist.

(q) Functioning outside of his or her particular field or fields of competence as established by his or her education, training, and experience.

(r) Willful failure to submit, on behalf of an applicant for licensure, verification of supervised experience to the board.

(s) Repeated acts of negligence.

The board shall study and report to the Legislature on or before July 1, 2000, concerning the efficacy of the prohibition contained in subdivision (p).

SEC. 3. Section 2960.1 of the Business and Professions Code is amended to read:

2960.1. Notwithstanding Section 2960, any proposed decision or decision issued under this chapter in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee or registrant engaged in any act of sexual contact, as defined in Section 728, when that act is with a patient, or with a former patient within two years following termination of therapy, shall contain an order of revocation. The revocation shall not be stayed by the administrative law judge.

SEC. 3.1. Section 3356 of the Business and Professions Code is amended to read:

3356. (a) An applicant who has fulfilled the requirements of Section 3352 and has made application therefor, may have a temporary license issued to him or her upon satisfactory proof to the committee that the applicant holds a hearing aid dispenser's license in another state, that the licensee has not been subject to formal disciplinary action by another licensing authority, and that the applicant has been engaged in the fitting and sale of hearing aids for the two years immediately prior to application.

(b) A temporary license issued pursuant to this section shall be valid for one year from date of issuance and is not renewable. A temporary license shall automatically terminate upon issuance of a license prior to expiration of the one-year period.

(c) The holder of a temporary license issued pursuant to this section who fails either license examination shall be subject to and shall comply with the supervision requirements of Section 3357 and any regulations adopted pursuant thereto.

SEC. 3.5. Section 4826.1 of the Business and Professions Code is amended to read:

4826.1. A veterinarian who on his or her own initiative, at the request of an owner, or at the request of someone other than the owner, renders emergency treatment to a sick or injured animal at the scene of an accident shall not be liable in damages to the owner of that animal in the absence of gross negligence.

SEC. 4. Section 4980.31 is added to the Business and Professions Code, to read:

4980.31. A licensee shall display his or her license in a conspicuous place in the licensee's primary place of practice.

SEC. 4.5. Section 4980.40 of the Business and Professions Code is amended to read:

4980.40. To qualify for a license an applicant shall have all the following qualifications:

(a) Applicants applying for licensure on or after January 1, 1988, shall possess a doctor's or master's degree in marriage, family, and child counseling, marital and family therapy, psychology, clinical psychology, counseling psychology, counseling with an emphasis in marriage, family, and child counseling, or social work with an emphasis in clinical social work, obtained from a school, college, or university accredited by the Western Association of Schools and Colleges, or approved by the Bureau for Private Postsecondary and Vocational Education, pursuant to Section 94774.5 of the Education Code. For purposes of this chapter, the term "approved by the Bureau for Private Postsecondary and Vocational Education" shall not include temporary, conditional, or any other type of interim approval. In order to qualify for licensure pursuant to this subdivision, any doctor's or master's degree program shall contain no less than 48 semester or 72 quarter units of instruction. The instruction shall include no less than 12 semester units or 18 quarter units of coursework in the areas of marriage, family, and child counseling, and marital and family systems approaches to treatment.

The coursework shall include all of the following areas:

(1) The salient theories of a variety of psychotherapeutic orientations directly related to marriage, family, and child counseling, and marital and family systems approaches to treatment.

(2) Theories of marriage and family therapy and how they can be utilized in order to intervene therapeutically with couples, families, adults, children, and groups.

(3) Developmental issues and life events from infancy to old age and their effect upon individuals, couples, and family relationships. This may include coursework that focuses on specific family life events and the psychological, psychotherapeutic, and health implications that arise within couples and families, including, but not limited to, childbirth, child rearing, childhood, adolescence, adulthood, marriage, divorce, blended families, stepparenting, and geropsychology.

(4) A variety of approaches to the treatment of children.

The board may, by regulation, further define the content requirements of required courses specified in this subdivision.

(b) (1) In addition to the 12 semester or 18 quarter units of coursework specified above, the doctor's or master's degree program shall contain not less than six semester or nine quarter units of supervised practicum in applied psychotherapeutic techniques, assessment, diagnosis, prognosis, and treatment of premarital, couple, family, and child relationships, including dysfunctions, healthy functioning, health promotion, and illness prevention, in a supervised clinical placement that provides supervised fieldwork experience within the scope of practice of a marriage, family, and child counselor.

(2) For applicants who enrolled in a degree program on or after January 1, 1995, the practicum shall include a minimum of 150 hours of face-to-face experience counseling individuals, couples, families, or groups.

(3) (A) Supervised practicum hours, as specified in this subdivision, shall be evaluated, accepted, and credited as hours for trainee experience by the board.

(B) The practicum hours shall be considered as part of the 48 semester or 72 quarter unit requirement.

(c) As an alternative to meeting the qualifications specified in subdivision (a), the board shall accept as equivalent degrees, those master's or doctor's degrees granted by educational institutions whose degree program is approved by the Commission on Accreditation for Marriage and Family Therapy Education.

(d) All applicants shall, in addition, complete the coursework or training specified in Section 4980.41.

(e) All applicants shall be at least 18 years of age.

(f) All applicants shall have at least two years' experience that meets the requirements of this chapter in interpersonal relationships, marriage, family, and child counseling and psychotherapy under the supervision of a licensed marriage, family, and child counselor, licensed clinical social worker, licensed psychologist, or a licensed physician certified in psychiatry by the American Board of Psychiatry and Neurology. Experience shall not be gained under the supervision of an individual who has provided therapeutic services to that applicant. For those supervisorial relationships in effect on or before December 31, 1988, and which remain in continuous effect thereafter, experience may be gained under the supervision of a licensed physician who has completed a residency in psychiatry. Any person supervising another person pursuant to this subdivision shall have been licensed or certified for at least two years prior to acting as a supervisor, shall have a current and valid license that is not under suspension or probation, and shall meet the requirements established by regulations.

(g) The applicant shall pass a written examination and an oral examination conducted by the board or its designees.

(h) The applicant shall not have committed acts or crimes constituting grounds for denial of licensure under Section 480. The board shall not issue a registration or license to any person who has been convicted of any crime in the United States that involves sexual abuse of children or who has been ordered to register as a mentally disordered sex offender or the equivalent in another state or territory.

(i) Applicants applying for licensure on or before December 31, 1987, shall possess all of the qualifications specified in subdivisions (e) to (h), inclusive, and shall possess a doctor's or master's degree in marriage, family, and child counseling, social work, clinical psychology, counseling, counseling psychology, child development and family studies, or a degree determined by the board to be equivalent, obtained from a school, college, or university accredited by the Western Association of Schools and Colleges, the Northwest Association of Secondary and Higher Schools, or an essentially equivalent accrediting agency as determined by the board.

(j) For applicants applying for a license pursuant to subdivision (i), the board may make a determination that an applicant's master's or doctor's degree is an equivalent degree if it finds that the degree was issued upon completion of a course of academic study primarily designed to train persons as a marriage, family, and child counselor. The course of study completed by the applicant shall contain not less than 30 semester or 45 quarter units of coursework as follows: (1) human biological, psychological, and social development, (2) human sexuality, (3) psychopathology, (4) cross-cultural mores and values, (5) theories of marriage, family, and child counseling, (6) professional ethics and law, (7) human communication, (8) research methodology, (9) theories and applications of psychological testing, and (10) not less than six semester or nine quarter units of supervised practicum in applied psychotherapeutic techniques, assessment, diagnosis, prognosis, and treatment of premarital, family, and child relationship dysfunctions. The applicant shall submit to the board satisfactory written verification by the chief academic officer of the accredited or approved school, or by an authorized designee, that the applicant has successfully completed courses, including the practicum required by the board. The verification shall include, but need not be limited to, descriptions of the completed courses. The board may request further written verification of course content and academic experience to determine that the applicant's training and experience is equivalent to the course of instruction required by this section.

(k) (1) An applicant applying for intern registration who, prior to December 31, 1987, met the qualifications for registration, but who failed to apply or qualify for intern registration may be granted an intern registration if the applicant meets all of the following criteria:

(A) The applicant possesses a doctor's or master's degree in marriage, family, and child counseling, marital and family therapy, psychology, clinical psychology, counseling psychology, counseling with an emphasis in marriage, family, and child counseling, or social work with an emphasis in clinical social work obtained from a school, college, or university currently conferring that degree that, at the time the degree was conferred, was accredited by the Western Association of Schools and Colleges, and where the degree conferred was, at the time it was conferred, specifically intended to satisfy the educational requirements for licensure by the Board of Behavioral Sciences.

(B) The applicant's degree and the course content of the instruction underlying that degree have been evaluated by the chief academic officer of a school, college, or university accredited by the Western Association of Schools and Colleges to determine the extent to which the applicant's degree program satisfies the current educational requirements for licensure, and the chief academic officer certifies to the board the amount and type of instruction needed to meet the current requirements.

(C) The applicant completes a plan of instruction that has been approved by the board at a school, college, or university accredited by the Western Association of Schools and Colleges that the chief academic officer of the educational institution has, pursuant to subparagraph (B), certified will meet the current educational requirements when considered in conjunction with the original degree.

(2) A person applying under this subdivision shall be considered a trainee, as that term is defined in Section 4980.03, once he or she is enrolled to complete the additional coursework necessary to meet the current educational requirements for licensure.

(*l*) This section shall become operative on January 1, 1997.

SEC. 5. Section 4980.80 of the Business and Professions Code is amended to read:

4980.80. The board may issue a license to any person who, at the time of application, has held for at least two years a valid license issued by a board of marriage counselor examiners, marriage therapist examiners, or corresponding authority of any state, if the education and supervised experience requirements are substantially the equivalent of this chapter and the person successfully completes the written and oral licensing examinations administered in this state and pays the fees specified. Issuance of the license is further conditioned upon the person's completion of the following coursework or training:

(a) A two semester or three quarter unit course in California law and professional ethics for marriage, family, and child counselors which shall include areas of study as specified in Section 4980.41.

(b) A minimum of seven contact hours of training or coursework in child abuse assessment and reporting as specified in Section 28, and any regulations promulgated thereunder.

(c) A minimum of 10 contact hours of training or coursework in human sexuality, as specified in Section 25, and any regulations promulgated thereunder.

(d) A minimum of 15 contact hours of training or coursework in alcoholism and other chemical substance dependency as specified by regulation.

(e) Instruction in spousal or partner abuse assessment, detection, and intervention. This instruction may be taken either in fulfillment of other requirements for licensure or in a separate course.

(f) With respect to human sexuality and alcoholism and other chemical substance dependency, the board may accept training or coursework acquired out of state.

SEC. 6. Section 4980.90 of the Business and Professions Code is amended to read:

4980.90. (a) Experience gained outside of California shall be accepted toward the licensure requirements if it is substantially equivalent to that required by this chapter provided that the applicant has gained a minimum of 250 hours of supervised experience in direct counseling within California while registered as an intern with the board.

(b) Education gained outside of California shall be accepted toward the licensure requirements if it is substantially equivalent to the education requirements of this chapter, provided that the applicant has completed all of the following:

(1) A two semester or three quarter unit course in California law and professional ethics for marriage, family, and child counselors which shall include areas of study as specified in Section 4980.41.

(2) A minimum of seven contact hours of training or coursework in child abuse assessment and reporting as specified in Section 28, and any regulations promulgated thereunder.

(3) A minimum of 10 contact hours of training or coursework in sexuality as specified in Section 25, and any regulations promulgated thereunder.

(4) A minimum of 15 contact hours of training or coursework in alcoholism and other chemical substance dependency as specified by regulation.

(5) Instruction in spousal or partner abuse assessment, detection, and intervention. This instruction may be taken either in fulfillment of other educational requirements for licensure or in a separate course.

(6) With respect to human sexuality and alcoholism and other chemical substance dependency, the board may accept training or coursework acquired out of state.

(c) For purposes of this section, the board may, in its discretion, accept education as substantially equivalent if the applicant has been

granted a degree in a single integrated program primarily designed to train marriage, family, and child counselors and if the applicant's education meets the requirements of Sections 4980.37 and 4980.40 provided, however, that the degree title and number of units in the degree program need not be identical to those required by subdivision (a) of Section 4980.40. Where the applicant's degree does not contain the number of units required by subdivision (a) of Section 4980.40, the board may, in its discretion, accept the applicant's education as substantially equivalent if the applicant's degree otherwise complies with this section and the applicant completes the units required by subdivision (a) of Section 4980.40.

SEC. 7. Section 4982.25 of the Business and Professions Code is amended to read:

4982.25. The board may deny any application, or may suspend or revoke any license or registration issued under this chapter, for any of the following:

(a) Denial of licensure, revocation, suspension, restriction, or any other disciplinary action imposed by another state or territory or possession of the United States, or by any other governmental agency, on a license, certificate, or registration to practice marriage, family, and child counseling, or any other healing art, shall constitute unprofessional conduct. A certified copy of the disciplinary action decision or judgment shall be conclusive evidence of that action.

(b) Revocation, suspension, or restriction by the board of a license, certificate, or registration to practice as a clinical social worker or educational psychologist shall also constitute grounds for disciplinary action for unprofessional conduct against the licensee or registrant under this chapter.

SEC. 8. Section 4984.1 of the Business and Professions Code is amended to read:

4984.1. A license that has expired may be renewed at any time within five years after its expiration on filing an application for renewal on a form prescribed by the board and payment of the renewal fee in effect on the last regular renewal date. If the license is renewed after its expiration, the licensee, as a condition precedent to renewal, shall also pay the delinquency fee prescribed by this chapter.

SEC. 9. Section 4984.4 of the Business and Professions Code is amended to read:

4984.4. A license that is not renewed within five years after its expiration may not be renewed, restored, reinstated, or reissued thereafter, but the licensee may apply for and obtain a new license if:

(a) No fact, circumstance, or condition exists that, if the license were issued, would justify its revocation or suspension.

(b) He or she pays the fees that would be required if he or she were applying for a license for the first time.

(c) He or she takes and passes the current licensing examinations.

SEC. 10. Section 4984.7 of the Business and Professions Code is amended to read:

4984.7. The amount of the fees prescribed by this chapter that relate to licensing of persons to engage in the business of marriage, family and child counseling is that established by the following schedule:

(a) The fee for applications for examination received on or after January 1, 1987, shall be one hundred dollars ($100).

(b) The fee for issuance of the initial license shall be a maximum of one hundred eighty dollars ($180).

(c) For those persons whose license expires on or after January 1, 1996, the renewal fee shall be a maximum of one hundred eighty dollars ($180).

(d) The delinquency fee shall be ninety dollars ($90). Any person who permits his or her license to become delinquent may have it restored only upon the payment of all fees that he or she would have paid if the license had not become delinquent, plus the payment of any and all outstanding delinquency fees.

(e) For those persons registering as interns on or after January 1, 1996, the registration fee shall be ninety dollars ($90).

(f) For those persons whose registration as an intern expires on or after January 1, 1996, the renewal fee shall be seventy-five dollars ($75).

(g) The written examination fee shall be one hundred dollars ($100). After successfully passing the written examination, each applicant for oral examination shall submit two hundred dollars ($200). Applicants failing to appear for any examination, once having been scheduled, shall forfeit any examination fees paid.

(h) An applicant who fails any written or oral examination may within one year from the notification date of that failure, retake the examination as regularly scheduled without further application upon payment of one hundred dollars ($100) for the written reexamination and two hundred dollars ($200) for the oral reexamination. Thereafter, the applicant shall not be eligible for further examination until he or she files a new application, meets all current requirements, and pays all fees required. Persons failing to appear for the reexamination, once having been scheduled, shall forfeit any reexamination fees paid.

(i) The fee for rescoring a written examination shall be twenty dollars ($20). The fee for appeal of an oral examination shall be one hundred dollars ($100).

(j) The fee for issuance of any replacement registration, license, or certificate shall be twenty dollars ($20).

(k) The fee for issuance of a certificate or letter of good standing shall be twenty-five dollars ($25).

With regard to all license, examination, and other fees, the board shall establish fee amounts at or below the maximum amounts specified in this chapter.

SEC. 11. Section 4984.8 is added to the Business and Professions Code, to read:

4984.8. A licensed marriage, family and child counselor may apply to the board to request that his or her license be placed on inactive status. Licensees who hold an inactive license shall pay a biennial fee of half of the active renewal fee. Licensees holding an inactive license shall be exempt from continuing education requirements specified in Section 4980.54, but shall otherwise be subject to this chapter and shall not engage in the practice of marriage, family and child counseling in this state. Licensees on inactive status who have not committed any acts or crimes constituting grounds for denial of licensure and have completed any required continuing education equivalent to that required for a single renewal period may, upon their request, have their license to practice marriage, family and child counseling placed on active status. Licensees requesting their license be placed on active status at any time between a renewal cycle shall pay the remaining half of their renewal fee.

SEC. 12. Section 4986.41 is added to the Business and Professions Code, to read:

4986.41. A licensee shall display his or her license in a conspicuous place in the licensee's primary place of practice.

SEC. 13. Section 4986.70 of the Business and Professions Code is amended to read:

4986.70. The board may refuse to issue a license, or may suspend or revoke the license of any licensee if he or she has been guilty of unprofessional conduct which has endangered or is likely to endanger the health, welfare, or safety of the public. Unprofessional conduct includes, but is not limited to, the following:

(a) Conviction of a crime substantially related to the qualifications, functions and duties of an educational psychologist, the record of conviction being conclusive evidence thereof.

(b) Securing a license by fraud or deceit.

(c) Using any narcotic as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code or any hypnotic drug or alcoholic beverage to an extent or in a manner dangerous to himself or herself, or to any other person, or to the public and to an extent that such action impairs his or her ability to perform his or her work as a licensed educational psychologist with safety to the public.

(d) Improper advertising.

(e) Violating or conspiring to violate the terms of this article.

(f) Committing a dishonest or fraudulent act as a licensed educational psychologist resulting in substantial injury to another.

(g) Denial of licensure, revocation, suspension, restriction, or any other disciplinary action imposed by another state or territory or possession of the United States, or by any other governmental agency, on a license, certificate, or registration to practice educational psychology or any other healing art, shall constitute

unprofessional conduct. A certified copy of the disciplinary action, decision, or judgment shall be conclusive evidence of that action.

(h) Revocation, suspension, or restriction by the board of a license, certificate, or registration to practice as a clinical social worker or marriage, family and child counselor shall constitute grounds for disciplinary action for unprofessional conduct against the licensee or registrant under this chapter.

SEC. 14. Section 4986.80 of the Business and Professions Code is amended to read:

4986.80. The amount of the fees prescribed by this chapter that relate to the licensing of educational psychologists is that established by the following schedule:

(a) Persons applying for an original license after July 1, 1986, shall pay an application fee of one hundred dollars ($100).

(b) The fee for issuance of the initial license shall be a maximum of one hundred fifty dollars ($150).

(c) Persons whose license expires after January 1, 1991, shall pay a renewal fee of a maximum of one hundred fifty dollars ($150).

(d) The delinquency fee shall be seventy-five dollars ($75). Any person who permits his or her license to become delinquent may have it restored only upon the payment of all fees that he or she would have paid if the license had not become delinquent, plus the payment of any and all delinquency fees.

(e) The written examination fee shall be one hundred dollars ($100). After successfully passing the written examination, each applicant for oral examination shall submit two hundred dollars ($200). Applicants failing to appear for any examination, once having been scheduled, shall forfeit any examination fees paid.

(f) The fee for each reexamination shall be the fee for each examination specified in subdivision (e). An applicant who has failed the written or oral examination may within one year from the notification date of failure, retake that examination as regularly scheduled without further application. Thereafter, the applicant shall not be eligible for further examination until he or she files a new application, meets all current requirements, and pays all fees required. Persons failing to appear for reexamination, once having been scheduled, shall forfeit any reexamination fees paid.

(g) The fee for rescoring a written examination shall be twenty dollars ($20). The fee for appeal of an oral examination shall be one hundred dollars ($100).

(h) The fee for issuance of any replacement registration, license, or certificate shall be twenty dollars ($20).

(i) The fee for issuance of a certificate or letter of good standing shall be twenty-five dollars ($25).

With regard to all license, examination, and other fees, the board shall establish fee amounts at or below the maximum amounts specified in this chapter.

SEC. 15. Section 4986.82 is added to the Business and Professions Code, to read:

4986.82. A licensed educational psychologist may apply to the board to request that his or her license be placed on inactive status. Licensees who hold an inactive license shall pay a biennial fee of half of the active renewal fee. Licensees shall be subject to this chapter and shall not engage in the practice of educational psychology in this state. Licensees on inactive status who have not committed any acts or crimes constituting grounds for denial of licensure may, upon their request, have their license to practice educational psychology placed on active status. Licensees requesting their license be placed on active status between renewal cycles shall pay the remaining half of their renewal fee.

SEC. 16. Section 4992.36 of the Business and Professions Code is amended to read:

4992.36. The board may deny any application, or may suspend or revoke any license or registration issued under this chapter, for any of the following:

(a) Denial of licensure, revocation, suspension, restriction, or any other disciplinary action imposed by another state or territory of the United States, or by any other governmental agency, on a license, certificate, or registration to practice clinical social work or any other healing art shall constitute grounds for disciplinary action for unprofessional conduct. A certified copy of the disciplinary action decision or judgment shall be conclusive evidence of that action.

(b) Revocation, suspension, or restriction by the board of a license, certificate, or registration to practice marriage, family, and child counseling, or educational psychology against a licensee or registrant shall also constitute grounds for disciplinary action for unprofessional conduct under this chapter.

SEC. 17. Section 4996.3 of the Business and Professions Code is amended to read:

4996.3. (a) Each application for written examination received on or after January 1, 1999, shall be accompanied by an application fee of one hundred dollars ($100) and a fee of up to one hundred fifty dollars ($150), including the examination fee and related administrative costs for the written examination. After successfully passing the written examination, each applicant shall submit two hundred dollars ($200) for the oral examination. Applicants failing to appear for any examination, once having been scheduled, shall forfeit any examination fees paid.

(b) The fee for rescoring a written examination shall be twenty dollars ($20). The fee for an appeal of an oral examination shall be one hundred dollars ($100).

(c) The fee for issuance of the initial license shall be a maximum of one hundred fifty-five dollars ($155).

(d) With regard to all license, examination, and other fees, the board shall establish fee amounts at or below the maximum amounts specified in this chapter.

SEC. 18. Section 4996.4 of the Business and Professions Code is amended to read:

4996.4. Notwithstanding Section 4996.3, an applicant who has failed the written examination may apply for reexamination upon payment of the fee of up to one hundred fifty dollars ($150) including the examination fee and related administrative costs and an applicant who has failed the oral examination may apply for reexamination upon payment of the fee of two hundred dollars ($200). An applicant who fails any written or oral examination may within one year from the notification date of failure, retake that examination as regularly scheduled, without further application, upon payment of the required examination fees. Thereafter, the applicant shall not be eligible for further examination until he or she files a new application, meets all current requirements, and pays all fees required. Applicants failing to appear for reexamination, once having been scheduled, shall forfeit any reexamination fees paid.

SEC. 19. Section 4996.6 of the Business and Professions Code is amended to read:

4996.6. (a) The renewal fee for licenses that expire on or after January 1, 1996, shall be a maximum of one hundred fifty-five dollars ($155) and shall be collected on a biennial basis by the board in accordance with Section 152.6. The fees shall be deposited in the State Treasury to the credit of the Behavioral Sciences Fund.

(b) If the license is renewed after its expiration, the licensee shall, as a condition precedent to renewal, also pay a delinquency fee of seventy-five dollars ($75).

Any person who permits his or her license to become delinquent may have it restored at any time within five years after its expiration upon the payment of all fees that he or she would have paid if the license had not become delinquent, plus the payment of all delinquency fees.

A license that is not renewed within five years after its expiration may not be renewed, restored, reinstated, or reissued thereafter, however the licensee may apply for and obtain a new license if:

(1) No fact, circumstance, or condition exists that, if the license were issued, would justify its revocation or suspension.

(2) He or she pays the fees that would be required if he or she were applying for a license for the first time.

(3) He or she takes and passes the current licensing examinations.

(c) The fee for issuance of any replacement registration, license, or certificate shall be twenty dollars ($20).

(d) The fee for issuance of a certificate or letter of good standing shall be twenty-five dollars ($25).

SEC. 20. Section 4996.7 of the Business and Professions Code is amended to read:

4996.7. A licensee shall display his or her license in a conspicuous place in the licensee's primary place of practice.

SEC. 21. Section 4997 is added to the Business and Professions Code, to read:

4997. A licensed clinical social worker may apply to the board to request that his or her license be placed on inactive status. Licensees who hold an inactive license shall pay a biennial fee of half of the active renewal fee. Licensees holding an inactive license shall be exempt from continuing education requirements specified in Section 4996.22, but shall otherwise be subject to this chapter and shall not engage in the practice of licensed clinical social work in this state. Licensees on inactive status who have not committed any acts or crimes constituting grounds for denial of licensure and have completed any required continuing education equivalent to that required for a single renewal period may, upon their request, have their license to practice licensed clinical social work placed on active status. Licensees requesting their license be placed on active status between renewal cycles shall pay the remaining half of their renewal fee.

SEC. 22. Section 5615 of the Business and Professions Code is amended to read:

5615. As used in this chapter:

"Landscape architect" means a person who holds a license to practice landscape architecture in this state under the authority of this chapter.

A person who practices landscape architecture within the meaning and intent of this article is a person who performs professional services, for the purpose of landscape preservation, development and enhancement, such as consultation, investigation, reconnaissance, research, planning, design, preparation of drawings, construction documents and specifications, and responsible construction observation. Landscape preservation, development and enhancement is the dominant purpose of services provided by landscape architects. Implementation of that purpose includes: (1) the preservation and aesthetic and functional enhancement of land uses and natural land features; (2) the location and construction of aesthetically pleasing and functional approaches and settings for structures and roadways; and, (3) design for trails and pedestrian walkway systems, plantings, landscape irrigation, landscape lighting, landscape grading and landscape drainage.

Landscape architects perform professional work in planning and design of land for human use and enjoyment. Based on analysis of environmental physical and social characteristics, and economic considerations, they produce overall plans and landscape project designs for integrated land use.

The practice of a landscape architect may, for the purpose of landscape preservation, development and enhancement, include: investigation, selection, and allocation of land and water resources for

appropriate uses; feasibility studies; formulation of graphic and written criteria to govern the planning and design of land construction programs; preparation review, and analysis of master plans for land use and development; production of overall site plans, landscape grading and landscape drainage plans, irrigation plans, planting plans, and construction details; specifications; cost estimates and reports for land development; collaboration in the design of roads, bridges, and structures with respect to the functional and aesthetic requirements of the areas on which they are to be placed; negotiation and arrangement for execution of land area projects; field observation and inspection of land area construction, restoration, and maintenance.

This practice shall include the location, arrangement, and design of those tangible objects and features as are incidental and necessary to the purposes outlined herein. Nothing herein shall preclude a duly licensed landscape architect from planning the development of land areas and elements used thereon or from performing any of the services described in this section in connection with the settings, approaches, or environment for buildings, structures, or facilities, in accordance with the accepted public standards of health, safety, and welfare.

This chapter shall not empower a landscape architect, licensed under this chapter, to practice, or offer to practice, architecture or engineering in any of its various recognized branches.

SEC. 22.2. Section 5616 of the Business and Professions Code is amended to read:

5616. Any licensed landscape architect who agrees to provide professional services pursuant to this chapter shall provide every customer with a detailed written contract. That written contract shall include, but not be limited to, all of the following:

(a) A full description of services to be rendered by the landscape architect.

(b) A list of any consultants who may be utilized under the contract.

(c) The date of completion of the work to be performed under the contract.

(d) The total price that is required to complete the contract which fully discloses one of the following:

(1) The amount of the lump sum of the services.

(2) The hourly fee, not to exceed an expressed amount.

(3) The percentage of the construction costs used in computing the total price.

(4) Any other method of payment agreed to by both parties.

(e) A notice in prominent type which reads: "LANDSCAPE ARCHITECTS ARE REGULATED BY THE STATE OF CALIFORNIA. ANY QUESTIONS CONCERNING A LANDSCAPE ARCHITECT MAY BE REFERRED TO THE LANDSCAPE ARCHITECT TECHNICAL COMMITTEE AT:

LANDSCAPE ARCHITECTS TECHNICAL COMMITTEE
400 R Street, Suite 4000
SACRAMENTO, CA. 95814
(916)445-4954"

(f) The name, address, and license number of the landscape architect.

(g) A description of the procedure that the landscape architect and client will use to accommodate additional services.

SEC. 22.3. Section 5621 of the Business and Professions Code is amended to read:

5621. (a) There is hereby created within the jurisdiction of the board, a Landscape Architects Technical Committee, hereinafter referred to in this chapter as the landscape architects committee.

(b) The landscape architects committee shall consist of five members who shall be licensed to practice landscape architecture in this state. The Governor shall appoint three of the members. The Senate Committee on Rules and the Speaker of the Assembly shall appoint one member each.

(c) The initial members to be appointed by the Governor are as follows: one member for a term of one year; one member for a term of two years; and one member for a term of three years. The Senate Committee on Rules and the Speaker of the Assembly shall initially each appoint one member for a term of four years. Thereafter, appointments shall be made for four-year terms, expiring on June 1 of the fourth year and until the appointment and qualification of his or her successor or until one year shall have elapsed whichever first occurs. Vacancies shall be filled for the unexpired term.

(d) No person shall serve as a member of the landscape architects committee for more than two consecutive terms.

(e) This section shall become inoperative on July 1, 2004, and as of January 1, 2005, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2005, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 22.4. Section 5622 of the Business and Professions Code is amended to read:

5622. (a) The landscape architects committee may assist the board in the examination of candidates for a landscape architect's license and, after investigation, evaluate and make recommendations regarding potential violations of this chapter.

(b) The landscape architects committee may investigate, assist, and make recommendations to the board regarding the regulation of landscape architects in this state.

(c) The landscape architects committee may perform such duties and functions that have been delegated to it by the board pursuant to Section 5620.

(d) The landscape architects committee may send a representative to all meetings of the full board to report on the committee's activities.

(e) This section shall become inoperative on July 1, 2004, and, as of January 1, 2005, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2005, deletes or extends the date on which it becomes inoperative and is repealed.

SEC. 22.5. Section 5624 of the Business and Professions Code is amended to read:

5624. Each member of the landscape architects committee shall receive per diem and expenses, as provided in Section 103.

SEC. 22.6. Section 5626 of the Business and Professions Code is amended to read:

5626. The executive officer shall keep an accurate record of all proceedings of the landscape architects committee.

SEC. 22.7. Section 5629 of the Business and Professions Code is amended to read:

5629. The board shall prosecute all persons guilty of violating the provisions of this chapter. Except as provided in Section 159.5, the board may employ inspectors, special agents, investigators, and clerical assistance as it may deem necessary to carry out the provisions of this chapter. It may fix the compensation to be paid for those services and incur any additional expense as may be deemed necessary.

SEC. 22.8. Section 5630 of the Business and Professions Code is amended to read:

5630. The board may, in accordance with the provisions of the Administrative Procedure Act, adopt, amend, or repeal such rules and regulations as are reasonably necessary to:

(a) Govern the examinations of applicants for licenses to practice landscape architecture.

(b) Establish criteria for approving schools of landscape architecture.

(c) Establish rules or professional conduct that are not inconsistent with state or federal law. Every person who holds a license issued by the board shall be governed and controlled by these rules.

(d) Carry out the provisions of this chapter.

SEC. 22.9. Section 5640 of the Business and Professions Code is amended to read:

5640. It is a misdemeanor, punishable by a fine of not less than fifty dollars ($50) nor more than five hundred dollars ($500) or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment, for any person, who, without possessing a valid, unrevoked license as provided in this chapter, engages in the practice of landscape architecture or uses the title or term "Landscape Architect" in any sign, card, listing, advertisement, or in any other manner that would imply or indicate that he or she is a landscape architect as defined in Section 5615.

SEC. 22.10. Section 5641 of the Business and Professions Code is amended to read:

5641. This chapter shall not be deemed to prohibit any person from making plans or drawings for the selection, placement, or use of plants when the execution of such plans or drawings does not affect the public health, safety and welfare.

This chapter shall not be deemed to prohibit any person from making any plans, drawings or specifications for any property owned by that person.

Every person who holds a valid license issued by the State of California, under the provisions of Chapter 1 (commencing with Section 6721) of the Food and Agricultural Code, authorizing engagement in the business of selling nursery stock in this state, may engage in the preparation of plans or drawings as an adjunct to merchandising nursery stock and related products, but may not use the title of landscape architect. That activity is exempt from licensure under the provisions of this chapter.

SEC. 22.11. Section 5642 of the Business and Professions Code is amended to read:

5642. This chapter shall not be deemed to prevent a landscape architect from forming a partnership, firm, or corporation with, or employing, persons who are not landscape architects if the signature, date, and license number of the landscape architect appears on all instruments of service. In no case shall the other members of the partnership, firm, or corporation be designated or described as landscape architects.

The name of the licensed landscape architect shall appear wherever the firm name is used in the professional practice of the partnership, firm, or corporation, and the landscape architect shall reside in California when the partnership, firm, or corporation maintains a California office or mailing address. The name of the licensee shall appear on all partnership, firm, or corporation stationery, brochures, business cards and any instruments of service used or provided in the professional practice of the partnership, firm, or corporation.

No partnership, firm, or corporation shall engage in the practice of landscape architecture unless the work is under the immediate and responsible direction of a licensee of the board. The partnership, firm, or corporation may operate California branch offices providing that each branch office has in it a resident landscape architect licensed under this chapter for services provided, which shall be the licensee's principal place of business. Offices established to observe construction for conformance with contract documents and design, are exempt from the provisions of this section. The name of the licensee shall appear whenever the partnership, firm, or corporation name is used in the professional practice of the partnership, firm, or corporation.

Failure of any person to comply with this section constitutes a ground for disciplinary action.

SEC. 22.12. Section 5644 of the Business and Professions Code is amended to read:

5644. Any person who holds a valid state license or other authority that authorizes the person to engage in a business or occupation, insofar as the person engages in a professional, occupational, or business activity within the scope of that license or other authority, shall not be required to be licensed under this chapter.

SEC. 22.13. Section 5652 of the Business and Professions Code is amended to read:

5652. If the applicant's examination is satisfactory, and upon the payment of the license fee fixed by this chapter, the executive officer shall issue a license to the applicant showing that the person named therein is entitled to practice landscape architecture in this state, in accordance with the provisions of this chapter.

SEC. 22.14. Section 5653 of the Business and Professions Code is amended to read:

5653. The board may deny or refuse to issue a license to an applicant upon proof of the commission by the applicant of any act or omission which would constitute grounds for disciplinary action under this chapter if committed by a licensee.

SEC. 22.15. Section 5654 of the Business and Professions Code is amended to read:

5654. The board shall keep a record of the names and addresses of all licenseholders and such additional personal data as the board may require. A proper index and record of each license issued shall be kept by the board.

SEC. 22.16. Section 5655 of the Business and Professions Code is amended to read:

5655. Licenses to practice landscape architecture shall remain in full force until revoked or suspended for cause, or until they expire, as provided in this chapter.

SEC. 22.17. Section 5656 of the Business and Professions Code is amended to read:

5656. A duplicate license to practice landscape architecture in place of one which has been lost, destroyed, or mutilated shall be issued upon proper application, subject to the rules and regulations of the board. A duplicate license fee fixed by this chapter shall be charged for the issuance of the duplicate license.

SEC. 22.18. Section 5657 of the Business and Professions Code is amended to read:

5657. Each licenseholder shall notify the executive officer of the board of any change of address of his or her place of business. A penalty as provided in this chapter shall be paid by a licenseholder who fails to notify the board within 30 days after a change of address.

SEC. 22.19. Section 5659 of the Business and Professions Code is amended to read:

5659. Each person licensed under this chapter shall sign and date all plans, specifications, and other instruments of service and

contracts therefor, prepared for others. In addition to the signature and date, all final landscape architectural plans, specifications, and other instruments of service and contracts therefor shall bear the landscape architect's license number and the renewal date of his or her license. Failure to comply with this section constitutes a ground for disciplinary action. Each person licensed under this chapter may, upon licensure, obtain a stamp of the design authorized by the board, bearing his or her name, license number, the renewal date of the license and the legend "landscape architect" and the legend "State of California."

SEC. 22.20. Section 5660 of the Business and Professions Code is amended to read:

5660. The board may upon its own motion, and shall upon the verified complaint in writing of any person, investigate the actions of any landscape architect, and may suspend for a period not exceeding one year, or revoke, the license of any landscape architect who is guilty of any one or more of the acts or omissions constituting grounds for disciplinary action under the chapter.

SEC. 22.21. Section 5662 of the Business and Professions Code is amended to read:

5662. All proceedings for the suspension or revocation of licenses under this chapter shall be conducted in accordance with the provisions of Chapter 5 of Part 1 of Division 3 of Title 2 of the Government Code. The board shall have all of the powers granted therein.

SEC. 22.22. Section 5665 of the Business and Professions Code is amended to read:

5665. A suspended license is subject to expiration and shall be renewed as provided in this article, but such renewal does not entitle the holder of the license, while it remains suspended and until it is reinstated, to engage in the activity to which the license relates, or in any other activity or conduct in violation of the order or judgment by which it was suspended.

A revoked license is subject to expiration as provided in this chapter, but it may not be renewed. If it is reinstated after its expiration, the holder of the license, as a condition precedent to its reinstatement, shall pay a reinstatement fee in an amount equal to the renewal fee in effect on the last regular renewal date before the date on which it is reinstated, plus the delinquency fee, if any, accrued at the time of its revocation.

SEC. 22.23. Section 5666 of the Business and Professions Code is amended to read:

5666. The fact that the holder of a license is practicing in violation of the provisions of this chapter constitutes a ground for disciplinary action.

SEC. 22.24. Section 5667 of the Business and Professions Code is amended to read:

5667. The fact that the holder of a license has obtained the license by fraud or misrepresentation, or that the person named in the license has obtained it by fraud or misrepresentation constitutes a ground for disciplinary action.

SEC. 22.25. Section 5668 of the Business and Professions Code is amended to read:

5668. The fact that the holder of a license is impersonating a landscape architect or former landscape architect of the same or similar name, or is practicing under an assumed, fictitious or corporate name, constitutes a ground for disciplinary action.

SEC. 22.26. Section 5669 of the Business and Professions Code is amended to read:

5669. The fact that the holder of a license has aided or abetted in the practice of landscape architecture, any person not authorized to practice landscape architecture under the provisions of this chapter, constitutes a ground for disciplinary action.

SEC. 22.27. Section 5670 of the Business and Professions Code is amended to read:

5670. The fact that, in the practice of landscape architecture, the holder of a license has been guilty of fraud or deceit constitutes a ground for disciplinary action.

SEC. 22.28. Section 5671 of the Business and Professions Code is amended to read:

5671. The fact that, in the practice of landscape architecture, the holder of a license has been guilty of negligence or willful misconduct constitutes a ground for disciplinary action.

SEC. 22.29. Section 5672 of the Business and Professions Code is amended to read:

5672. The fact that the holder of a license has been guilty of gross incompetence constitutes a ground for disciplinary action.

SEC. 22.30. Section 5673 of the Business and Professions Code is amended to read:

5673. The fact that the holder of a license has affixed his or her signature, or his or her stamp, or has permitted the use of his or her name to or on plans, drawings, specifications or other instruments of service which have not been prepared by him or her or under his or her immediate and responsible direction, or has permitted his or her name or his or her signature or his or her stamp to be used for the purpose of assisting any person, not a landscape architect, to evade the provisions of this chapter, constitutes a ground for disciplinary action.

SEC. 22.31. Section 5675.5 is added to the Business and Professions Code, to read:

5675.5. The fact that the holder of a license has had disciplinary action taken by any public agency for any act substantially related to the qualifications, functions, or duties as a landscape architect constitutes a ground for disciplinary action.

SEC. 22.32. Section 5676 of the Business and Professions Code is amended to read:

5676. A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge of a felony is deemed to be a conviction within the meaning of this article. The board may order the license suspended or revoked, or may decline to issue a license, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information or indictment.

SEC. 22.33. Section 5677 of the Business and Professions Code is repealed.

SEC. 22.34. Section 5678 of the Business and Professions Code is repealed.

SEC. 22.35. Section 5678.5 of the Business and Professions Code is amended to read:

5678.5. Every insurer providing professional liability insurance to a holder of a license, and every licenseholder, shall send a complete report to the board on any settlement or arbitration award in excess of five thousand dollars ($5,000) of a claim or action for damages caused by the licenseholder's fraud, deceit, negligence, incompetency, or recklessness in practice. The report shall be sent within 30 days after the settlement agreement has been consented to by the insured or within 30 days after service of the arbitration award on the parties.

SEC. 22.36. Section 5679 of the Business and Professions Code is repealed.

SEC. 22.37. Section 5679.5 of the Business and Professions Code is amended to read:

5679.5. Every settlement or arbitration award in excess of five thousand dollars ($5,000) of a claim or action for damages caused by the licenseholder's fraud, deceit, negligence, incompetency, or recklessness in practice when the licenseholder does not possess professional liability insurance as to the claim shall, within 30 days after any settlement agreement has been consented to by the licenseholder or 30 days after service of the arbitration award on the parties, be reported to the board. A complete report shall be made by appropriate means by the licenseholder or the holder's counsel, with a copy of the communication to be sent to the claimant through the claimant's counsel if the claimant is so represented, or directly if the claimant is not. If, within 45 days of the conclusion of the settlement agreement or service of the arbitration award on the parties, counsel for the claimant, or if the claimant is not represented by counsel, the claimant, has not received a copy of the report, he or she shall himself or herself make the complete report. Failure of the

licenseholder or claimant or, if represented by counsel, their counsel, to comply with this section shall be a misdemeanor punishable by a fine of not less than one hundred dollars ($100) or more than one thousand dollars ($1,000). Knowing and intentional failure to comply with this section, or conspiracy or collusion not to comply with this section, or to hinder or impede any other person in compliance shall be a misdemeanor punishable by a fine of not less than ten thousand dollars ($10,000) nor more than one hundred thousand dollars ($100,000).

SEC. 22.38. Section 5680 of the Business and Professions Code is amended to read:

5680. (a) Licenses issued under this chapter shall expire no more than 24 months after the issue date. The expiration date of the original license shall be set by the board in a manner to best distribute renewal procedures throughout each year.

(b) To renew an unexpired license, the licenseholder shall, on or before the expiration date of the license, apply for renewal on a form prescribed by the board, and pay the renewal fee prescribed by this chapter.

(c) The renewal form shall include a statement specifying whether the licensee was convicted of a crime or disciplined by another public agency during the preceding renewal period and that the licensee's representations on the renewal form are true, correct, and contain no material omissions of fact, to the best knowledge and belief of the licensee.

SEC. 22.39. Section 5680.05 of the Business and Professions Code is amended to read:

5680.05. Within 10 days after a judgment by a court of this state that a licenseholder has committed a crime or is liable for any death, personal or property injury or loss caused by the licenseholder's fraud, deceit, negligence, incompetency, or recklessness in practice, the clerk of the court which rendered the judgment shall report this to the board.

SEC. 22.40. Section 5680.1 of the Business and Professions Code is amended to read:

5680.1. Except as otherwise provided in this chapter, a license which has expired may be renewed at any time within three years after its expiration on filing of application for renewal on a form prescribed by the board, and payment of the renewal fee in effect on the last preceding regular renewal date. If the license is renewed more than 30 days after its expiration, the licenseholder, as a condition precedent to renewal, shall also pay the delinquency fee prescribed by this chapter. Renewal under this section shall be effective on the date on which the application is filed, on the date on which the renewal fee is paid, or on the date on which the delinquency fee, if any, is paid, whichever last occurs. If so renewed, the license shall continue in effect through the date provided in

Section 5680 which next occurs after the effective date of the renewal, when it shall expire if it is not again renewed.

SEC. 22.41. Section 5680.2 of the Business and Professions Code is amended to read:

5680.2. A license which is not renewed within three years after its expiration may not be renewed, restored, reissued, or reinstated thereafter, but the holder of the license may apply for and obtain a new license if:

(a) No fact, circumstance, or condition exists which, if the license were issued, would justify its revocation or suspension.

(b) The applicant pays all of the fees which would be required of the applicant if the applicant were then applying for the license for the first time.

(c) The applicant takes and passes the examination which would be required of the applicant if the applicant were then applying for the license for the first time, or otherwise establishes to the satisfaction of the board that the applicant is qualified to practice landscape architecture.

The board may, by regulation, authorize the waiver or refund of all or any part of the examination fee in those cases in which a license is issued without an examination under this section.

SEC. 22.42. Section 5681 of the Business and Professions Code is amended to read:

5681. The fees prescribed by this chapter for landscape architect applicants and landscape architect licensees shall be fixed by the board as follows:

(a) The application fee for reviewing an applicant's eligibility to take any section of the examination may not exceed one hundred dollars ($100).

(b) The fee for any section of the examination administered by the board shall not exceed the actual cost to the board for purchasing and administering each exam.

(c) The fee for an original license may not exceed four hundred dollars ($400), except that, if the license 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 license. The board may, by appropriate regulation, provide for the waiver or refund of the initial license fee where the license is issued less than 45 days before the date on which it will expire.

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

(e) The fee for a duplicate license may not exceed fifty dollars ($50).

(f) The renewal fee may not exceed four hundred dollars ($400).

(g) The penalty for failure to notify the board of a change of address within 30 days from an actual change in address may not exceed fifty dollars ($50).

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

(i) The fee for filing an application for approval of a school pursuant to Section 5650 may not exceed six hundred dollars ($600) charged and collected on an biennial basis.

SEC. 22.43. Section 7536 of the Business and Professions Code is amended to read:

7536. (a) The business of each licensee shall be operated under the active direction, control, charge, or management, in this state, of the licensee, if he or she is qualified, or the person who is qualified to act as the licensee's manager, if the licensee is not qualified.

(b) No person shall act as a qualified 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 director.

(2) Made a satisfactory showing to the director that he or she has the qualifications prescribed in Section 7526 and that none of the facts stated in Section 7538 or 7538.5 exist as to him or her.

(c) A person shall not act as a qualified manager of more than five licensees. The person acting as a qualified manager shall share equally with the licensee the responsibility and any liability for the conduct of the business of the licensee and the actions of the employees and other personnel of the licensee. This section shall not apply to any licensee that notifies the bureau in writing that he or she is not conducting any business, but requests to maintain a current license status with the bureau. Whenever the licensee resumes conducting business, the licensee shall so inform the bureau in writing within 30 days.

(d) Any person acting as a qualified manager of a licensee shall be the holder of a qualification certificate issued by the bureau. The certificate, together with the current renewal certificate, shall be predominantly displayed below the private investigator's license.

SEC. 22.48. Section 8698.6 of the Business and Professions Code is amended to read:

8698.6. 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 chaptered before January 1, 2000, deletes or extends that date.

SEC. 23. Section 9880.1 of the Business and Professions Code is amended to read:

9880.1. The following terms as used in this chapter have the meaning expressed in this section.

(a) "Automotive repair dealer" means a person who, for compensation, engages in the business of repairing or diagnosing malfunctions of motor vehicles.

(b) "Chief" means the Chief of the Bureau of Automotive Repair.

(c) "Bureau" means the Bureau of Automotive Repair.

(d) "Motor vehicle" means a passenger vehicle required to be registered with the Department of Motor Vehicles and all motorcycles whether or not required to be registered by the Department of Motor Vehicles.

(e) "Repair of motor vehicles" means all maintenance of and repairs to motor vehicles performed by an automotive repair dealer including automotive body repair work, but excluding those repairs made pursuant to a commercial business agreement and also excluding repairing tires, changing tires, lubricating vehicles, installing light bulbs, batteries, windshield wiper blades and other minor accessories, cleaning, adjusting, and replacing spark plugs, replacing fan belts, oil, and air filters, and other minor services, which the director, by regulation, determines are customarily performed by gasoline service stations.

No service shall be designated as minor, for purposes of this section, if the director finds that performance of the service requires mechanical expertise, has given rise to a high incidence of fraud or deceptive practices, or involves a part of the vehicle essential to its safe operation.

(f) "Person" includes firm, partnership, association, limited liability company, or corporation.

(g) An "automotive technician" is an employee of an automotive repair dealer or is that dealer, if the employer or dealer repairs motor vehicles and who for salary or wage performs maintenance, diagnostics, repair, removal, or installation of any integral component parts of an engine, driveline, chassis or body of any vehicle, but excluding repairing tires, changing tires, lubricating vehicles, installing light bulbs, batteries, windshield wiper blades, and other minor accessories; cleaning, replacing fan belts, oil and air filters; and other minor services which the director, by regulation, determines are customarily performed by a gasoline service station.

(h) "Director" means the Director of Consumer Affairs.

(i) "Commercial business agreement" means an agreement, whether in writing or oral, entered into between a business or commercial enterprise and an automobile repair dealer, prior to the repair which is requested being made, which agreement contemplates a continuing business arrangement under which the automobile repair dealer is to repair any vehicle covered by the agreement, but does not mean any warranty or extended service agreement normally given by an automobile repair facility to its customers.

SEC. 24. Section 9882.5 of the Business and Professions Code is amended to read:

9882.5. The director shall on his or her own initiative or in response to complaints, investigate on a continuous basis and gather evidence of violations of this chapter and of any regulation adopted pursuant to this chapter, by any automotive repair dealer or automotive technician, whether registered or not, and by any

employee, partner, officer, or member of any automotive repair dealer. The director shall establish procedures for accepting complaints from the public against any dealer or automotive technician. The director may suggest measures that, in the director's judgment, would compensate for any damages suffered as a result of an alleged violation. If the dealer accepts the suggestions and performs accordingly, such fact shall be given due consideration in any subsequent disciplinary proceeding.

SEC. 25. Section 9884.7 of the Business and Professions Code is amended to read:

9884.7. (a) The director, where the automotive repair dealer cannot show there was a bona fide error, may refuse to validate, or may invalidate temporarily or permanently, the registration of an automotive repair dealer for any of the following acts or omissions related to the conduct of the business of the automotive repair dealer, which are done by the automotive repair dealer or any automotive technician, employee, partner, officer, or member of the automotive repair dealer.

(1) Making or authorizing in any manner or by any means whatever any statement written or oral 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.

(2) Causing or allowing a customer to sign any work order which does not state the repairs requested by the customer or the automobile's odometer reading at the time of repair.

(3) Failing or refusing to give to a customer a copy of any document requiring his or her signature, as soon as the customer signs the document.

(4) Any other conduct which constitutes fraud.

(5) Conduct constituting gross negligence.

(6) Failure in any material respect to comply with the provisions of this chapter or regulations adopted pursuant to it.

(7) Any willful departure from or disregard of accepted trade standards for good and workmanlike repair in any material respect, which is prejudicial to another without consent of the owner or his or her duly authorized representative.

(8) Making false promises of a character likely to influence, persuade, or induce a customer to authorize the repair, service, or maintenance of automobiles.

(9) Having repair work done by someone other than the dealer or his or her employees without the knowledge or consent of the customer unless the dealer can demonstrate that the customer could not reasonably have been notified.

(10) Conviction of a violation of Section 551 of the Penal Code.

Upon refusal to validate a registration, the director shall notify the applicant thereof, in writing, by personal service or mail addressed to the address of the applicant set forth in the application, and the applicant shall be given a hearing under Section 9884.12 if, within 30

days thereafter, he or she files with the bureau a written request for hearing, otherwise the refusal is deemed affirmed.

(b) Except as provided for in subdivision (c), if an automotive repair dealer operates more than one place of business in this state, the director pursuant to subdivision (a) shall only refuse to validate, or shall only invalidate temporarily or permanently the registration of the specific place of business which has violated any of the provisions of this chapter. This violation, or action by the director, shall not affect in any manner the right of the automotive repair dealer to operate his or her other places of business.

(c) Notwithstanding subdivision (b), the director may refuse to validate, or may invalidate temporarily or permanently, the registration for all places of business operated in this state by an automotive repair dealer upon a finding that the automotive repair dealer has, or is, engaged in a course of repeated and willful violations of this chapter, or regulations adopted pursuant to it.

SEC. 26. Article 10 (commencing with Section 9889.30) of Chapter 20.3 of Division 3 of the Business and Professions Code is repealed.

SEC. 26.4. Section 13660 of the Business and Professions Code is amended to read:

13660. (a) Every person, firm, partnership, association, trustee, or corporation that operates a service station shall provide, upon request, refueling service to a disabled driver of a vehicle that displays a disabled person's plate or placard, or a disabled veteran's plate, issued by the Department of Motor Vehicles. The price charged for the motor vehicle fuel shall be no greater than that which the station otherwise would charge the public generally to purchase motor vehicle fuel without refueling service.

(b) Any person or entity specified in subdivision (a) that operates a service station shall be exempt from this section during hours when:

(1) Only one employee is on duty.

(2) Only two employees are on duty, one of whom is assigned exclusively to the preparation of food.

As used in this subdivision, the term "employee" does not include a person employed by an unrelated business that is not owned or operated by the entity offering motor vehicle fuel for sale to the general public.

(c) (1) Every person, firm, partnership, association, trustee, or corporation required to provide refueling service for persons with disabilities pursuant to this section shall post the following notice, or a notice with substantially similar language, in a manner and single location that is conspicuous to a driver seeking refueling service:

"Service to Disabled Persons

Disabled individuals properly displaying a disabled person's plate or placard, or a disabled veteran's plate, issued by the Department

of Motor Vehicles, are entitled to request and receive refueling service at this service station for which they may not be charged more than the self-service price."

(2) If refueling service is limited to certain hours pursuant to an exemption set forth in subdivision (b), the notice required by paragraph (1) shall also specify the hours during which refueling service for persons with disabilities is available.

(3) Every person, firm, partnership, association, trustee, or corporation that, consistent with subdivision (b), does not provide refueling service for persons with disabilities during any hours of operation shall post the following notice in a manner and single location that is conspicuous to a driver seeking refueling service:

"No Service for Disabled Persons

This service station does not provide refueling service for disabled individuals."

(4) The signs required by paragraphs (1) and (3) shall also include a statement indicating that drivers seeking information about enforcement of laws related to refueling services for persons with disabilities may call one or more toll-free telephone numbers specified and maintained by the Department of Rehabilitation. By January 31, 1999, the Director of the Department of Rehabilitation shall notify the State Board of Equalization of the toll-free telephone number or numbers to be included on the signs required by this subdivision. At least one of these toll-free telephone numbers shall be accessible to persons using telephone devices for the deaf. The State Board of Equalization shall publish information regarding the toll-free telephone numbers as part of its annual notification required by subdivision (i). In the event that the toll-free telephone number or numbers change, the Director of the Department of Rehabilitation shall notify the State Board of Equalization of the new toll-free telephone number or numbers to be used.

(d) During the county sealer's normal petroleum product inspection of a service station, the sealer shall verify that a sign has been posted in accordance with subdivision (c). If a sign has not been posted, the sealer shall issue a notice of violation to the owner or agent. The sealer shall be reimbursed, as prescribed by the department, from funds provided under Chapter 14. If substantial, repeated violations of subdivision (c) are noted at the same service station, the sealer shall refer the matter to the appropriate local law enforcement agency.

(e) The local law enforcement agency shall, upon the verified complaint of any person or public agency, investigate the actions of any person, firm, partnership, association, trustee, or corporation alleged to have violated this section. If the local law enforcement

agency determines that there has been a denial of service in violation of this section, or a substantial or repeated failure to comply with subdivision (c), the agency shall levy the fine prescribed in subdivision (f).

(f) Any person who, as a responsible managing individual setting service policy of a service station, or as an employee acting independently against the set service policy, acts in violation of this section is guilty of an infraction punishable by a fine of one hundred dollars ($100) for the first offense, two hundred dollars ($200) for the second offense, and five hundred dollars ($500) for each subsequent offense.

(g) In addition to those matters referred pursuant to subdivision (e), the city attorney, the district attorney, or the Attorney General, upon his or her own motion, may investigate and prosecute alleged violations of this section. Any person or public agency may also file a verified complaint alleging violation of this section with the city attorney, district attorney, or Attorney General.

(h) Enforcement of this section may be initiated by any intended beneficiary of the provisions of this section, his or her representatives, or any public agency that exercises oversight over the service station, and the action shall be governed by Section 1021.5 of the Code of Civil Procedure.

(i) An annual notice setting forth the provisions of this section shall be provided by the State Board of Equalization to every person, firm, partnership, association, trustee, or corporation that operates a service station.

(j) A notice setting forth the provisions of this section shall be printed on each disabled person's placard issued by the Department of Motor Vehicles on and after January 1, 1999. A notice setting forth the provisions of this section shall be provided to each person issued a disabled person's or disabled veteran's plate on and after January 1, 1998.

(k) For the purposes of this action "refueling service" means the service of pumping motor vehicle fuel into the fuel tank of a motor vehicle.

SEC. 26.7. Section 18643 of the Business and Professions Code is amended to read:

18643. (a) No professional boxer shall spar for training purposes with any person not licensed as a professional boxer or who does not have a sparring permit. The commission may authorize a professional boxer to spar with someone not licensed as a professional boxer or who does not have a sparring permit, under special circumstances subject to a commission representative being present. No person licensed under this chapter shall conduct, hold, or permit unlicensed persons to spar unless commission authorization is granted.

(b) The commission may issue a permit to spar with professional boxers for training purposes. This permit shall be issued only to

persons who meet the physical and mental requirements for licensure as a professional boxer.

(c) The operator of a professional boxers' training gymnasium shall inspect and log daily on a form approved by the commission the professional boxing license or sparring permit of any individual who wishes to use the gymnasium for sparring or boxing and no person shall do so unless that person has a valid and current license or permit. Individuals described in subdivision (a) shall be exempt from these requirements.

SEC. 27. Section 22448 is added to the Business and Professions Code, to read:

22448. Any civil action to enforce any cause of action pursuant to this chapter shall be commenced within four years after the cause of action has accrued. The cause of action is not to be deemed to have accrued until the discovery, by the aggrieved party, of the facts constituting the violation.

SEC. 28. Section 8214.1 of the Government Code is amended to read:

8214.1. The Secretary of State may refuse to appoint any person as notary public or may revoke or suspend the commission of any notary public upon any of the following grounds:

(a) Substantial and material misstatement or omission in the application submitted to the Secretary of State.

(b) Conviction of a felony, a lesser offense involving moral turpitude, or a lesser offense of a nature incompatible with the duties of a notary public. A conviction after a plea of nolo contendere is deemed to be a conviction within the meaning of this subdivision.

(c) Revocation, suspension, restriction, or denial of a professional license, if the revocation, suspension, restriction, or denial was for misconduct for dishonesty, or for any cause substantially relating to the duties or responsibilities of a notary public.

(d) Failure to discharge fully and faithfully any of the duties or responsibilities required of a notary public.

(e) When adjudged liable for damages in any suit grounded in fraud, misrepresentation, or violation of the state regulatory laws or in any suit based upon a failure to discharge fully and faithfully the duties as a notary public.

(f) The use of false or misleading advertising wherein the notary public has represented that the notary public has duties, rights, or privileges that he or she does not possess by law.

(g) The practice of law in violation of Section 6125 of the Business and Professions Code.

(h) Charging more than the fees prescribed by this chapter.

(i) Commission of any act involving dishonesty, fraud, or deceit with the intent to substantially benefit the notary public or another, or substantially injure another.

(j) Failure to complete the acknowledgment at the time the notary's signature and seal are affixed to the document.

(k) Failure to administer the oath or affirmation as required by paragraph (3) of subdivision (a) of Section 8205.

(*l*) Execution of any certificate as a notary public containing a statement known to the notary public to be false.

(m) Violation of Section 8223.

(n) Failure to submit any remittance payable upon demand by the Secretary of State under this chapter or failure to satisfy any court-ordered money judgment, including restitution.

(o) Failure to secure the sequential journal of official acts, pursuant to Section 8206, or the official seal, pursuant to Section 8207.

(p) Violation of Section 8219.5.

SEC. 29. Section 8214.15 of the Government Code is amended to read:

8214.15. (a) In addition to any commissioning or disciplinary sanction, a violation of subdivision (f), (i), (*l*), (m), or (p) of Section 8214.1, or a willful violation of subdivision (d) of Section 8214.1, is punishable by a civil penalty not to exceed one thousand five hundred dollars ($1,500).

(b) In addition to any commissioning or disciplinary sanction, a violation of subdivision (h), (j), or (k) of Section 8214.1, or a negligent violation of subdivision (d) of Section 8214.1, is punishable by a civil penalty not to exceed seven hundred fifty dollars ($750).

(c) The civil penalty may be imposed by the Secretary of State if a hearing is not requested pursuant to Section 8214.3. If a hearing is requested, the hearing officer shall make the determination.

(d) Any civil penalties collected pursuant to this section shall be transferred to the General Fund. It is the intent of the Legislature that to the extent General Fund moneys are raised by penalties collected pursuant to this section, that money should be made available to the Secretary of State's office to defray its costs of investigating and pursuing commissioning and monetary remedies for violations of the notary public law.

SEC. 30. Section 8219.5 of the Government Code is amended to read:

8219.5. (a) Every notary public who is not an attorney who advertises the services of a notary public in a language other than English by signs or other means of written communication, with the exception of a single desk plaque, shall post with that advertisement a notice in English and in the other language which sets forth the following:

(1) This statement: I am not an attorney and, therefore, cannot give legal advice about immigration or any other legal matters.

(2) The fees set by statute which a notary public may charge.

(b) The notice required by subdivision (a) shall be printed and posted as prescribed by the Secretary of State.

(c) Literal translation of the phrase "notary public" into Spanish, hereby defined as "notario publico" or "notario," is prohibited. For purposes of this subdivision, "literal translation" of a word or phrase

from one language to another means the translation of a word or phrase without regard to the true meaning of the word or phrase in the language which is being translated.

(d) The Secretary of State shall suspend for a period of not less than one year or revoke the commission of any notary public who fails to comply with subdivision (a) or (c). However, on the second offense the commission of such notary public shall be revoked permanently.

SEC. 31. Section 8223 of the Government Code is amended to read:

8223. (a) No notary public who holds himself or herself out as being an immigration specialist, immigration consultant or any other title or description reflecting an expertise in immigration matters shall advertise in any manner whatsoever that he or she is a notary public.

(b) A notary public may enter data, provided by the client, on immigration forms provided by a federal or state agency. The fee for this service shall not exceed ten dollars ($10) per individual for each set of forms. If notary services are performed in relation to the set of immigration forms, additional fees may be collected pursuant to Section 8211. This fee limitation shall not apply to an attorney, who is also a notary public, who is rendering professional services regarding immigration matters.

(c) Nothing in this section shall be construed to exempt a notary public who enters data on an immigration form at the direction of a client, or otherwise performs the services of an immigration consultant, as defined by Section 22441 of the Business and Professions Code, from the requirements of Sections 22440 to 22447, inclusive, of the Business and Professions Code.

SEC. 32. Section 803 of the Penal Code is amended to read:

803. (a) Except as provided in this section, a limitation of time prescribed in this chapter is not tolled or extended for any reason.

(b) No time during which prosecution of the same person for the same conduct is pending in a court of this state is a part of a limitation of time prescribed in this chapter.

(c) A limitation of time prescribed in this chapter does not commence to run until discovery of an offense described in this subdivision. This subdivision applies to an offense punishable by imprisonment in the state prison, a material element of which is fraud or breach of a fiduciary obligation or the basis of which is misconduct in office by a public officer, employee, or appointee, including, but not limited to, the following offenses:

(1) Grand theft of any type, forgery, falsification of public records, or acceptance of a bribe by a public official or a public employee.

(2) A violation of Section 72, 118, 118a, 132, or 134.

(3) A violation of Section 25540, of any type, or Section 25541 of the Corporations Code.

(4) A violation of Section 1090 or 27443 of the Government Code.

(5) Felony welfare fraud or Medi-Cal fraud in violation of Section 11483 or 14107 of the Welfare and Institutions Code.

(6) Felony insurance fraud in violation of Section 548 or 550 of this code or former Section 1871.1, or Section 1871.4, of the Insurance Code.

(7) A violation of Section 580, 581, 582, 583, or 584 of the Business and Professions Code.

(8) A violation of Section 22430 of the Business and Professions Code.

(9) A violation of Section 10690 of the Health and Safety Code.

(10) A violation of Section 529a.

(d) If the defendant is out of the state when or after the offense is committed, the prosecution may be commenced as provided in Section 804 within the limitations of time prescribed by this chapter, and no time up to a maximum of three years during which the defendant is not within the state shall be a part of those limitations.

(e) A limitation of time prescribed in this chapter does not commence to run until the offense has been discovered, or could have reasonably been discovered, with regard to offenses under Division 7 (commencing with Section 13000) of the Water Code, under Chapter 6.5 (commencing with Section 25100) of, Chapter 6.7 (commencing with Section 25280) of, or Chapter 6.8 (commencing with Section 25300) of, Division 20 of, or Part 4 (commencing with Section 41500) of Division 26 of, the Health and Safety Code, or under Section 386, or offenses under Chapter 5 (commencing with Section 2000) of Division 2 of, or Chapter 9 (commencing with Section 4000) of Division 2 of, or Chapter 10 (commencing with Section 7301) of Division 3 of, or Chapter 19.5 (commencing with Section 22440) of Division 8 of, the Business and Professions Code.

(f) (1) Notwithstanding any other limitation of time described in this chapter, a criminal complaint may be filed within one year of the date of a report to a responsible adult or agency by a child under 18 years of age that the child is a victim of a crime described in Section 261, 286, 288, 288a, 288.5, 289, or 289.5.

(2) For purposes of this subdivision, a "responsible adult" or "agency" means a person or agency required to report pursuant to Section 11166. This subdivision applies only if both of the following occur:

(A) The limitation period specified in Section 800 or 801 has expired.

(B) The defendant has committed at least one violation of Section 261, 286, 288, 288a, 288.5, 289, or 289.5 against the same victim within the limitation period specified for that crime in either Section 800 or 801.

(3) (A) This subdivision applies to a cause of action arising before, on, or after January 1, 1990, the effective date of this subdivision, and it shall revive any cause of action barred by Section 800 or 801 if any of the following occurred or occurs:

(i) The complaint or indictment was filed on or before January 1, 1997, and it was filed within the time period specified in this subdivision.

(ii) The complaint or indictment is or was filed subsequent to January 1, 1997, and it is or was filed within the time period specified within this subdivision.

(iii) The victim made the report required by this subdivision to a responsible adult or agency after January 1, 1990, and a complaint or indictment was not filed within the time period specified in this subdivision, but a complaint or indictment is filed no later than 180 days after the date on which either a published opinion of the California Supreme Court, deciding whether retroactive application of this section is constitutional, becomes final or the United States Supreme Court files an opinion deciding the question of whether retroactive application of this subdivision is constitutional, whichever occurs first.

(iv) The victim made the report required by this subdivision to a responsible adult or agency after January 1, 1990, and a complaint or indictment was filed within the time period specified in this subdivision, but the indictment, complaint, or subsequently filed information was dismissed, but a new complaint or indictment is or was filed no later than 180 days after the date on which either a published opinion of the California Supreme Court, deciding whether retroactive application of this section is constitutional, becomes final or the United States Supreme Court files an opinion deciding the question of whether retroactive application of this subdivision is constitutional, whichever occurs first.

(B) (i) If the victim made the report required by this subdivision to a responsible adult or agency after January 1, 1990, and a complaint or indictment was filed within the time period specified in this subdivision, but the indictment, complaint, or subsequently filed information was dismissed, a new complaint or indictment may be filed notwithstanding any other provision of law, including, but not limited to, subdivision (c) of Section 871.5 and subdivision (b) of Section 1238.

(ii) An order dismissing an action filed under this subdivision, which is entered or becomes effective at any time prior to 180 days after the date on which either a published opinion of the California Supreme Court, deciding the question of whether retroactive application of this section is constitutional, becomes final or the United States Supreme Court files an opinion deciding the question of whether retroactive application of this subdivision is constitutional, whichever occurs first, shall not be considered an order terminating an action within the meaning of Section 1387.

(iii) Any ruling regarding the retroactivity of this subdivision or its constitutionality made in the course of the previous proceeding, including any review proceeding, shall not be binding upon refiling.

(g) (1) Notwithstanding any other limitation of time described in this chapter, a criminal complaint may be filed within one year of the date of a report to a California law enforcement agency by a person of any age alleging that he or she, while under the age of 18 years, was the victim of a crime described in Section 261, 286, 288, 288a, 288.5, 289, or 289.5.

(2) This subdivision applies only if both of the following occur:

(A) The limitation period specified in Section 800 or 801 has expired.

(B) The crime involved substantial sexual conduct, as described in subdivision (b) of Section 1203.066, excluding masturbation that is not mutual, and there is independent evidence that clearly and convincingly corroborates the victim's allegation. No evidence may be used to corroborate the victim's allegation that otherwise would be inadmissible during trial. Independent evidence does not include the opinions of mental health professionals.

(3) (A) This subdivision applies to a cause of action arising before, on, or after January 1, 1994, the effective date of this subdivision, and it shall revive any cause of action barred by Section 800 or 801 if any of the following occurred or occurs:

(i) The complaint or indictment was filed on or before January 1, 1997, and it was filed within the time period specified in this subdivision.

(ii) The complaint or indictment is or was filed subsequent to January 1, 1997, and it is or was filed within the time period specified within this subdivision.

(iii) The victim made the report required by this subdivision to a law enforcement agency after January 1, 1994, and a complaint or indictment was not filed within the time period specified in this subdivision, but a complaint or indictment is filed no later than 180 days after the date on which either a published opinion of the California Supreme Court, deciding the question of whether retroactive application of this subdivision is constitutional, becomes final or the United States Supreme Court files an opinion deciding the question of whether retroactive application of this subdivision is constitutional, whichever occurs first.

(iv) The victim made the report required by this subdivision to a law enforcement agency after January 1, 1994, and a complaint or indictment was filed within the time period specified in this subdivision, but the indictment, complaint, or subsequently filed information was dismissed, but a new complaint or indictment is filed no later than 180 days after the date on which either a published opinion of the California Supreme Court, deciding the question of whether retroactive application of this subdivision is constitutional, becomes final or the United States Supreme Court files an opinion deciding the question of whether retroactive application of this subdivision is constitutional, whichever occurs first.

(B) (i) If the victim made the report required by this subdivision to a law enforcement agency after January 1, 1994, and a complaint or indictment was filed within the time period specified in this subdivision, but the indictment, complaint, or subsequently filed information was dismissed, a new complaint or indictment may be filed notwithstanding any other provision of law, including, but not limited to, subdivision (c) of Section 871.5 and subdivision (b) of Section 1238.

(ii) An order dismissing an action filed under this subdivision, which is entered or becomes effective at any time prior to 180 days after the date on which either a published opinion of the California Supreme Court, deciding the question of whether retroactive application of this section is constitutional, becomes final or the United States Supreme Court files an opinion deciding the question of whether retroactive application of this subdivision is constitutional, whichever occurs first, shall not be considered an order terminating an action within the meaning of Section 1387.

(iii) Any ruling regarding the retroactivity of this subdivision or its constitutionality made in the course of the previous proceeding, by any trial court or any intermediate appellate court, shall not be binding upon refiling.

SEC. 33. 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 880

An act to amend Sections 25160, 25179.5, 25205.15, 25250.1, 25250.4, and 25250.7 of, and to add Sections 25121.1, 25160.3, and 25200.19 to, the Health and Safety Code, and to add and repeal Article 2.1 (commencing with Section 12170) of Chapter 4 of Part 2 of Division 2 of, the Public Contract Code, and to amend Sections 48620 and 71061 of the Public Resources Code, relating to recycling.

[Approved by Governor September 26, 1998. Filed with Secretary of State September 28, 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 Hazardous Waste Recycling Enhancement Act of 1998.

SEC. 2. Section 25121.1 is added to the Health and Safety Code, to read:

25121.1. (a) "Recycling" means using, reusing, or reclaiming a recyclable material.

(b) Notwithstanding subdivision (a), for purposes of the fees, taxes, and charges imposed pursuant to Article 7 (commencing with Section 25170), "recycling" means the collecting, transporting, storing, transferring, handling, segregating, processing, using or reusing, or reclaiming of recyclable material to produce recycled material.

SEC. 3. Section 25160 of the Health and Safety Code is amended to read:

25160. (a) For purposes of this chapter, "manifest" means a shipping document originated and signed by a generator of hazardous waste that contains all of the information required by the department and that complies with all applicable federal and state regulations.

(b) (1) Any person generating hazardous waste which is transported, or submitted for transportation, for offsite handling, treatment, storage, disposal, or any combination thereof, shall complete a manifest prior to the time the waste is transported or offered for transportation, and shall designate on that manifest the facility to which the waste is to be shipped for the handling, treatment, storage, disposal, or combination thereof. The manifest shall be completed, as required by the department. The generator shall provide the manifest to the person who will transport the hazardous waste, who is the driver, if the hazardous waste will be transported by vehicle, or the person designated by the railroad corporation or vessel operator, if the hazardous waste will be transported by rail or vessel. The generator shall use the standard California Uniform Hazardous Waste Manifest supplied by the department for all shipments of hazardous waste for which a manifest is required, except as provided in paragraph (2). A manifest shall only be used for the purposes specified in this chapter, including, but not limited to, identifying materials that the person completing the manifest reasonably believes are hazardous waste. Within 30 days from the date of transport, or submission for transport, of hazardous waste, each generator of that hazardous waste shall submit to the department a legible copy of each manifest used. The copy submitted to the department shall contain the signatures of the generator and the transporter. In lieu of submitting a copy of each manifest used, a generator may submit an electronic report to the department meeting the requirements of Section 25160.3.

(2) Any person generating hazardous waste which is transported, or submitted for transportation, for offsite handling, treatment, storage, disposal, or any combination thereof, outside of the state, shall complete, whether or not the waste is determined to be hazardous by the importing country or state, a standard California Uniform Hazardous Waste Manifest, or the generator shall complete, in its own form of manifest, the manifest required by the receiving state and shall submit a copy of that manifest to the department within 30 days from the date of the transport, or submission for transport, of the hazardous waste. In lieu of submitting a copy of each manifest used, a generator may submit an electronic report to the department meeting the requirements of Section 25160.3.

(3) Within 30 days from the date of transport, or submission for transport, of hazardous waste out of state, each generator of that hazardous waste shall submit to the department a legible copy of each manifest used. The copy submitted to the department shall contain the signatures of the generator, all transporters, excepting intermediate rail transporters, and the out-of-state facility operator. If within 35 days from the date of the initial shipment, or for exports by water to foreign countries, 60 days after the initial shipment, the generator has not received a copy of the manifest signed by all transporters and the facility operator, the generator shall contact the owner or operator of the designated facility to determine the status of the hazardous waste and to request that the owner or operator immediately provide a signed copy of the manifest to the generator. If within 45 days from the date of the initial shipment or, for exports by water to foreign countries, 90 days from the date of the initial shipment, the generator has not received a copy of the signed manifest from the facility owner or operator, the generator shall submit an exception report to the department.

(4) For shipments of waste that do not require a manifest pursuant to Title 40 of the Code of Federal Regulations, the department, by regulation, may establish manifest requirements that differ from the requirements of this subdivision. The requirements for an alternative form of manifest shall ensure that the hazardous waste is transported by a registered hazardous waste transporter, that the hazardous waste is tracked, and that human health and safety and the environment are protected.

(c) (1) The department shall determine the form and manner in which a manifest shall be completed and the information that the manifest shall contain. The information requested on the manifest shall serve as the data dictionary for purposes of the developing of an electronic reporting format pursuant to Section 71062 of the Public Resources Code. The form of each manifest and the information requested on each manifest shall be the same for all hazardous wastes, regardless of whether the hazardous wastes are also regulated pursuant to the federal act or by regulations adopted by the United States Department of Transportation. However, the form of the

manifest and the information required shall be consistent with federal regulations.

(2) Pursuant to federal regulations, the department may require information on the manifest in addition to the information required by federal regulations.

(d) (1) Any person who transports hazardous waste in a vehicle shall have a manifest in his or her possession while transporting the hazardous waste. The manifest shall be shown upon demand to any representative of the department, any officer of the California Highway Patrol, any local health officer, or any local public officer designated by the director. If the hazardous waste is transported by rail or vessel, the railroad corporation or vessel operator shall comply with Subchapter C (commencing with Section 171.1) of Chapter 1 of Subtitle B of Title 49 of the Code of Federal Regulations and shall also enter on the shipping papers any information concerning the hazardous waste which the department may require.

(2) Any person who transports any waste, as defined by Section 25124, and who is provided with a manifest for that waste shall, while transporting that waste, comply with all requirements of this chapter, and the regulations adopted pursuant thereto, concerning the transportation of hazardous waste.

(3) Any person who transports hazardous waste shall transfer a copy of the manifest to the facility operator at the time of delivery, or to the person who will subsequently transport the hazardous waste in a vehicle. Any person who transports hazardous waste and then transfers custody of that hazardous waste to a person who will subsequently transport that waste by rail or vessel shall transfer a copy of the manifest to the person designated by the railroad corporation or vessel operator, as specified by Subchapter C (commencing with Section 171.1) of Chapter 1 of Subtitle B of Title 49 of the Code of Federal Regulations.

(4) Any person transporting hazardous waste by motor vehicle, rail, or water shall certify to the department, at the time of initial registration and at the time of renewal of that registration pursuant to this article, that the transporter is familiar with the requirements of this section, the department regulations, and federal laws and regulations governing the use of manifests.

(e) (1) Any facility operator in the state who receives hazardous waste for handling, treatment, storage, disposal, or any combination thereof, which was transported with a manifest pursuant to this section, shall submit a copy of the manifest to the department within 30 days from the date of receipt of the hazardous waste. The copy submitted to the department shall contain the signatures of the generator, all transporters, excepting intermediate rail transporters, and the facility operator. In instances where the generator or transporter is not required by the generator's state or federal law to sign the manifest, the facility operator shall require the generator and all transporters, excepting intermediate rail transporters, to sign the

manifest before accepting the waste at any facility in this state. In lieu of submitting a copy of each manifest used, a facility operator may submit an electronic report to the department meeting the requirements of Section 25160.3.

(2) Any treatment, storage, or disposal facility receiving hazardous waste generated outside this state may only accept the hazardous waste for treatment, storage, disposal, or any combination thereof, if the hazardous waste is accompanied by a completed standard California Uniform Hazardous Waste Manifest.

(3) A facility operator may accept hazardous waste generated offsite that is not accompanied by a properly completed and signed standard California Uniform Hazardous Waste Manifest if the facility operator meets both of the following conditions:

(A) The facility operator is authorized to accept the hazardous waste pursuant to a hazardous waste facilities permit or other grant of authorization from the department.

(B) The facility operator is in compliance with the regulations adopted by the department specifying the conditions and procedures applicable to the receipt of hazardous waste under these circumstances.

(4) This subdivision applies only to shipments of hazardous waste for which a manifest is required pursuant to this section and the regulations adopted pursuant to this section.

(f) A generator, transporter, or facility operator may comply with the requirements of Sections 66262.40, 66263.22, 66264.71, and 66265.71 of Title 22 of the California Code of Regulations by storing manifest information electronically. A generator, transporter, or facility operator who stores manifest information electronically shall use the standardized electronic format and protocol for the exchange of electronic data established by the Secretary for Environmental Protection pursuant to Part 2 (commencing with Section 71050) of Division 34 of the Public Resources Code and the stored information shall include all the information required to be retained by the department, including all signatures required by this section.

(g) The department shall make available for review, by any interested party, information regarding the department's progress in adopting revised regulations relating to hazardous waste manifests, including specific requirements for milk run operations set forth in Section 66263.42 of Title 22 of the California Code of Regulations.

(h) (1) The department shall make available for review, by any interested party, the department's plans for revising and enhancing its system for tracking hazardous waste for the purposes of protecting human health and the environment, enforcing laws, collecting revenue, and generating necessary reports.

(2) On or before April 1, 1997, the department shall make available for review, by any interested party, information regarding the department's progress in revising and enhancing its system for tracking hazardous waste.

SEC. 4. Section 25160.3 is added to the Health and Safety Code, to read:

25160.3. (a) Any person generating hazardous waste that is transported or submitted for transportation, for offsite handling, treatment, storage, disposal, or a combination thereof, subject to the manifest requirements of Section 25160, and any facility operator in the state who receives hazardous waste for handling, treatment, storage, disposal, or any combination thereof, that was transported subject to the manifest requirements of Section 25160, may submit an electronic report to the department in lieu of the copy of the manifests required by subdivision (b) or (e) of Section 25160. The electronic report shall contain the information required by the department pursuant to subdivision (c) of Section 25160, and shall be provided no more than five business days after the end of the previous calendar month, or, if submitted bimonthly, no more than 10 business days after the previous two calendar weeks. The electronic report shall utilize the standardized electronic format and protocol for the exchange of electronic data established by the Secretary for Environmental Protection pursuant to Part 2 (commencing with Section 71050) of Division 34 of the Public Resources Code.

(b) The signatures required by Section 25160 and retained through the electronic reporting authorized by this section shall conform with the electronic signature techniques prescribed pursuant to Section 71066 of the Public Resources Code. Notwithstanding any other provision of law, printed representations of signatures and other information submitted in an electronic report pursuant to this section shall not be rendered inadmissible in any civil or criminal action by the best evidence rule and shall be deemed to meet the requirements of Section 1507 of the Evidence Code.

SEC. 5. Section 25179.5 of the Health and Safety Code is amended to read:

25179.5. (a) Notwithstanding any other provision of law, except as provided in this article, any hazardous waste restricted from land disposal by the federal act, or by the Environmental Protection Agency pursuant to the federal act, or by the department pursuant to Section 25179.6, is prohibited from land disposal in the state, unless one of the following circumstances apply:

(1) The hazardous waste, or the producer of the hazardous waste is granted a variance, extension, exclusion, or exemption by the administrator of the Environmental Protection Agency or by the department.

(2) The waste is treated in accordance with an applicable treatment standard.

(3) The federal restriction is stayed or otherwise conditioned by an appropriate court of law.

(4) It is a solid hazardous waste generated in the cleanup or decontamination of any site contaminated only by hazardous waste

that has not been restricted or prohibited by the federal act or prohibited by the Environmental Protection Agency pursuant to the federal act, and which does not meet the treatment standards established by the department pursuant to Section 25179.6, if the department or other federal, state, or local agency with authority to approve the cleanup or decontamination has approved the disposal of the waste.

(b) (1) Any treatment standard that is adopted or amended by the Environmental Protection Agency pursuant to subsection (m) of Section 6924 of the federal act, for a hazardous waste prohibited from land disposal pursuant to subdivision (a) and that is in effect, is the treatment standard required to be met before the hazardous waste may be disposed of, using land disposal, in the state. Any land disposal restriction, including any treatment standard, notification requirement, or recordkeeping requirement that is adopted or amended by the Environmental Protection Agency shall become effective in the state upon the effective date of that adoption or amendment, as specified in the final rule published in the Federal Register, and shall, as of that date, supersede any corresponding land disposal restriction specified in the department's regulations, unless one or more of the following conditions exist:

(A) A more stringent statutory requirement is applicable.

(B) A land disposal restriction previously adopted by the department expressly states, in that regulation, that the land disposal restriction is intended to supersede any less stringent land disposal restrictions which may be subsequently adopted by the Environmental Protection agency.

(C) The department subsequently adopts a more stringent land disposal restriction pursuant to subdivision (c) of Section 25179.6.

(2) Except as provided in Section 25179.6, any extension, variance, or exemption from the treatment standard granted by the Administrator of the Environmental Protection Agency shall also apply in this state.

(c) Subdivision (b) applies only to hazardous waste land disposal restrictions, standards, or criteria enforced by the department and does not limit or affect the standards adopted by any other local, state, or federal agency.

(d) Any hazardous waste or treated hazardous waste that meets all applicable treatment standards pursuant to this section may be disposed of to land at a hazardous waste disposal facility that has been issued a hazardous waste facilities permit allowing that disposal, if the disposal is conducted in compliance with this chapter, the applicable regulations adopted by the department, and the requirements of the permit issued by the department.

SEC. 6. Section 25200.19 is added to the Health and Safety Code, to read:

25200.19. (a) A hazardous waste facility that has obtained a hazardous waste facilities permit to receive hazardous wastes from

offsite locations may conduct bulk, packaged, or containerized hazardous waste unloading operations in accordance with the requirements of this section, except to the extent that the facility is subject to conditions and limitations in the permit concerning the receipt and unloading of hazardous wastes from offsite locations.

(b) A hazardous waste facility that has a hazardous waste facilities permit may conduct bulk, packaged, or containerized hazardous waste loading operations in accordance with the requirements of this section, except to the extent that the facility is subject to conditions and limitations in the permit concerning the shipment and loading for shipment of hazardous wastes to offsite locations.

(c) Unloading and loading operations subject to subdivisions (a) and (b) shall be conducted in accordance with all of the following requirements, unless otherwise specified in the hazardous waste facilities permit:

(1) As part of a loading or unloading operation conducted within the boundary of a hazardous waste facility, the hazardous waste shall not be held longer than 10 days outside of an authorized unit at the facility. The hazardous waste shall be moved directly between the authorized unit and the transport vehicle and shall not be held for any time off the transport vehicle outside of the authorized unit, except for that incidental period of time that is necessary to safely and effectively move the waste from the transport vehicle to the authorized unit or from the authorized unit to the transport vehicle.

(2) All loading and unloading operations shall be conducted within the boundary of the hazardous waste facility.

(3) There shall be adequate capacity within an authorized unit at the hazardous waste facility for all hazardous waste being loaded or unloaded in accordance with this section. Hazardous waste may not be held on any transport vehicle which, if unloaded, would exceed the permitted capacity of the originating or receiving unit at the hazardous waste facility, unless the waste is held on the transport vehicle as part of an authorized transfer operation.

(4) The loading or unloading of bulk hazardous waste shall be conducted within secondary containment within the hazardous waste facility, unless otherwise approved by the department. Any secondary containment required pursuant to this section shall meet the requirements of any regulations adopted by the department for bulk transfers.

(d) For purposes of this section, the following definitions apply:

(1) "Loading" means activities associated with removing packaged or containerized hazardous waste from an authorized unit or removing bulk hazardous waste from an authorized container, tank, or unit within a permitted hazardous waste facility, placing it on a transport vehicle within the facility, and shipping the waste offsite to another location in accordance with this chapter.

(2) "Transport vehicle" means a device, including a trailer, to propel, move or draw hazardous wastes by air, rail, highway, or water that is operated pursuant to the requirements of this chapter.

(3) "Unloading" means activities associated with the receipt of bulk, packaged, or containerized hazardous waste at a permitted hazardous waste facility from an offsite location, by means of a transport vehicle, and placing that packaged or containerized hazardous waste into an authorized unit or placing that bulk hazardous waste into an authorized container, tank, or unit within the facility in accordance with this chapter.

(e) The requirements of this section do not apply to hazardous waste being held or transferred pursuant to subparagraph (B) of paragraph (6) of subdivision (b) of Section 25123.3.

SEC. 7. Section 25205.15 of the Health and Safety Code is amended to read:

25205.15. (a) Except for the first four manifests used in a calendar year by a business with less than 100 employees, and except as provided in subdivision (b), the department shall impose a fee of twelve dollars ($12) for each California Uniform Hazardous Waste Manifest form used on or before June 30, 1998, by any person in the following manner:

(1) The Governor may order the department to refund three-quarters of the amount of manifest fees paid on manifests used during the 1991 calendar year.

(2) (A) On and after the 1992 calendar year, for all manifests used on or before June 30, 1998, the manifest fee shall be assessed on all manifests used in the calendar year ending prior to the start of the fiscal year in which the billing occurs.

(B) Notwithstanding subparagraph (A), the department may bill a person for a manifest used from January 1, 1998, to June 30, 1998, inclusive, during the period beginning January 1, 1999, and ending June 30, 1999, inclusive.

(b) The manifest fee for any manifest that is used on or before June 30, 1998, solely for wastes that are to be recycled is six dollars ($6) and the total amount of manifest fees paid in a calendar year for these manifests shall not exceed five thousand dollars ($5,000) for each hazardous waste identification number issued either by the department or the Environmental Protection Agency.

(c) Except as provided in paragraph (3), after June 30, 1998, in addition to any fees to cover printing and distribution costs, the department shall impose a manifest fee of seven dollars and fifty cents ($7.50) for each California Hazardous Waste Manifest form or electronic equivalent used after June 30, 1998, by any person, in the following manner:

(1) Except as provided in paragraph (2), on and after July 1, 1998, the department shall bill generators for each California Uniform Hazardous Waste Manifest form, manifest number, or electronic equivalent used after June 30, 1998. The billing frequency specified

by the department may range from monthly to annually, with the payment by the generator required within 30 days from the date of receipt of the billing, and shall be determined based on consultation with the regulated community. In preparing the bills, the department shall distinguish between manifests used solely for recycled hazardous wastes and those used for nonrecycled hazardous wastes. In determining the billing frequency, the department may take into account each person's volume of manifest usage.

(2) On or before July 1, 2000, the department shall determine if revenues from the manifest fee as collected pursuant to paragraph (1) will equal or exceed one million seven hundred thousand dollars ($1,700,000) for the 1999–2000 fiscal year. If the department determines that the manifest fee revenues will not equal or exceed one million seven hundred thousand dollars ($1,700,000) for the 1999–2000 fiscal year, the department shall instead, commencing July 1, 2000, implement a system to collect the manifest fee at the time of original sale of the manifest or distribution of manifest numbers or electronic equivalent to users by the department for all manifests that will be used after June 30, 2000. In developing this system, the department shall consult with the regulated community and shall take into consideration the potential economic effects that a system of collecting manifest fees at the point of original sale may have on generators and transporters.

(3) (A) The manifest fee shall not be collected on the use of California Hazardous Waste Recycling Manifests that are used solely for hazardous wastes that are recycled.

(B) On and after January 1, 1999, the manifest fee for each California Uniform Hazardous Waste Manifest form used after December 31, 1998, solely for hazardous waste derived from air compliance solvents, shall be three dollars and fifty cents ($3.50). This fee is in addition to any fees charged to cover printing and distribution costs.

(4) The department shall implement a system for the use of manifests that, after January 1, 1999, distinguishes among recycling manifests used solely for hazardous wastes that are to be recycled, manifests used solely to transport hazardous waste derived from air compliance solvents, and general manifests that may be used for transporting waste for any purpose.

(5) (A) If a person erroneously reports on a California Uniform Hazardous Waste Manifest that the manifest is being used for the transport of hazardous wastes that are being shipped for recycling or for the transport of hazardous waste derived from air compliance solvents, rather than the transport of other types of hazardous waste, the person shall pay the seven dollars and fifty cents ($7.50) manifest fee and an additional error correction fee of twenty dollars ($20) per manifest, as required pursuant to Section 25160.5.

(B) Notwithstanding subparagraph (A), the department shall provide the manifest user with a reasonable opportunity to notify the

department of any incorrect use of a manifest, as described in subparagraph (A), and to provide the department with the appropriate manifest fee payment without additional fines, penalties, or payment of the error correction fee.

(7) The department may adopt regulations to implement and administer the manifest fee system imposed pursuant to this subdivision.

(d) (1) The department shall expend the sum of one million dollars ($1,000,000) from the manifest fees deposited in the Hazardous Waste Control Account, upon appropriation by the Legislature in the annual Budget Act, to cover the one-time cost of implementing changes to the hazardous waste manifest tracking system during the 1998–99 fiscal year.

(2) On and after July 1, 1999, commencing with the 1999–2000 fiscal year and annually thereafter, the department shall expend, upon appropriation by the Legislature in the annual Budget Act, not less than one million fifty thousand dollars ($1,050,000) from the manifest fees, deposited in the Hazardous Waste Control Account, to establish a program to encourage hazardous waste generators to implement pollution prevention measures. The program shall be administered pursuant to administrative and expenditure criteria to be established by the Legislature.

(e) The manifest fees shall be deposited in the Hazardous Waste Control Account and be available for expenditure, upon appropriation by the Legislature.

(f) For the purposes of this section, "air compliance solvent" means a solvent, including aqueous solutions, that are required or approved for use by regulations adopted by the State Air Resources Board, an air pollution control district, or an air quality management district, to meet air emission standards adopted by that board or district and, pursuant to those regulations, is required to be used instead of another solvent that was used and recycled prior to the adoption of those regulations.

SEC. 8. 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 subsection (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 subsection (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 authorized 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 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 of Part 261 (commencing with Section 261.1) 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 Section 25250.7 shall be construed to affect the exemptions in Section 25250.3, or to subject contaminated petroleum products that are not hazardous waste 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. 9. 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. 10. 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 subsection (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 subsection (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) Except as provided in subparagraph (B), 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) If the resultant mixture is transported to a used oil recycling facility located in another state, that facility 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. 11. Article 2.1 (commencing with Section 12170) is added to Chapter 4 of Part 2 of Division 2 of the Public Contract Code, to read:

Article 2.1. Recycled Fluid, Paint, and Solvent

12170. (a) Fitness and quality being equal, all state agencies shall purchase the following recycled products, instead of nonrecycled products, whenever the recycled products are available at the same cost, or at a lower cost, than the total costs of the nonrecycled products:

(1) Rerefined automotive lubricants, including, but not limited to, rerefined motor oil, crankcase oil, engine oil, transmission fluid, and power steering fluid, for all state vehicles, including, but not limited to, all fleet cars, trucks, and buses.

(2) Recycled antifreeze fluid.

(3) Recycled solvent.

(4) Recycled paint.

(b) For the purposes of this section, the following definitions shall apply:

(1) "Available" means providing comparable delivery services and packaging specifications as the agency requires from all suppliers of that product. The agency shall not establish specifications that unnecessarily prevent the use of recycled products.

(2) "Fitness and quality" means all specifications required of the product for its specific use, including those required of a manufacturer's warranty, are met. Procuring agencies may set special standards for motor oil used in engines that operate under

extreme conditions, including law enforcement vehicles that run at excessive speeds or for long periods of operation.

(3) "Recycled antifreeze fluid" and "recycled solvents" means having a recycled content of at least 70 percent recycled materials.

(4) (A) "Recycled paint" means having a recycled content consisting of at least 50 percent postconsumer paint. Preconsumer or secondary paint does not qualify as "recycled paint" pursuant to this subparagraph.

(B) If paint containing 50 percent postconsumer content is unavailable, a state agency may substitute paint with the maximum amount of postconsumer content, but not less than 10 percent postconsumer content.

(5) "Rerefined motor oil" means having a base oil content consisting of at least 70 percent rerefined oil.

12171. This article shall remain in effect only until January 1, 2001, and as of that date is repealed, unless a later enacted statute that is enacted before January 1, 2001, deletes or extends that date.

SEC. 12. 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. 13. Section 71061 of the Public Resources Code is amended to read:

71061. The secretary shall establish a standardized electronic format and protocol for the exchange of electronic data for the purpose of meeting environmental data reporting or other usage requirements that are imposed pursuant to all of the following laws and regulations adopted pursuant to those laws:

(a) Chapter 6.5 (commencing with Section 25100), including, but not limited to, Article 6 (commencing with Section 25160), Chapter 6.7 (commencing with Section 25280), and Chapter 6.95 (commencing with Section 25500) of Division 20 of the Health and Safety Code.

(b) Article 1 (commencing with Section 42300) of Chapter 4 of Part 4 of Division 26 of the Health and Safety Code.

(c) Division 7 (commencing with Section 13000) of the Water Code.

(d) The Solid Waste Disposal Act (42 U.S.C. Sec. 6901 et seq.).

(e) The Emergency Planning and Community Right-to-Know Act (42 U.S.C. Sec. 11001 et seq.).

(f) Any other law relating to environmental protection, including, but not limited to, hazardous waste, substances, and materials, as determined by the secretary.

SEC. 14. (a) On or before June 30, 1999, the Bureau of State Audits, as established by Section 8543 of the Government Code, in consultation with, and with the cooperation of, the Department of Toxic Substances Control, the California Certified Unified Program Agency (CUPA) Forum, and the State Board of Equalization, shall

evaluate the current generator fee structure prescribed in Section 25205.5 of the Health and Safety Code and the hazardous waste fees charged by Certified Unified Program Agencies pursuant to Section 25404.5 of the Health and Safety Code and shall prepare a report to the Legislature recommending appropriate changes to that structure in order to accomplish the following objectives:

(1) Facilitate and encourage waste reduction and recycling, including both onsite and offsite recycling, and discourage the uncontrolled release and dispersion of hazardous wastes into the environment.

(2) Provide a fair and equitable basis to credit or reduce generator fees based on the payment of fees to other state and local agencies that are authorized to perform hazardous waste generator regulatory functions in lieu of the department. As part of the evaluation and report, the Bureau of State Audits shall do all of the following:

(A) Analyze the generator fees charged pursuant to Section 25205.5 of the Health and Safety Code to determine what services and benefits the department provides to generators and the public for that fee and what other activities, if any, are supported by that fee.

(B) Analyze the hazardous waste fees charged pursuant to Section 25404.5 of the Health and Safety Code to determine what services and benefits the Certified Unified Program Agencies provide to generators and the public for those fees, on a fee-for-service basis, and what other activities, if any, are supported by these fees.

(C) Determine if generators are being charged for duplicative or similar services and benefits by any of these fees.

(D) Evaluate and recommend where economies and equity can be achieved in the provision of services and benefits to generators and the public and the total amount of fees charged to generators.

(3) Develop a simple generator fee structure providing a reasonable, equitable, and appropriate allocation of fees for services and benefits provided by the department and CUPAs or any other entity supported by these fees.

(4) Provide sufficient revenues to support the department's regulatory programs which rely on the hazardous waste generator fees for funding while minimizing the financial impact on the state's industries. If the Bureau of State Audits' recommendations would result in generator fee revenues being reduced to less than 45 percent of the annual total revenues deposited in the Hazardous Waste Control Account in the General Fund, then the bureau shall also recommend an alternative funding source or sources to compensate for the revenue reduction.

(5) Maximize the collection of generator fee revenues which are due and payable to the state.

(b) For purposes of accomplishing the objective specified in paragraph (5) of subdivision (a), the Bureau of State Audits, in consultation with and with the cooperation of the Department of Toxic Substances Control, the California CUPA Forum, and the State

Board of Equalization, shall evaluate the generator fees that are due and payable to the state, as compared to actual generator fee revenues collected, and the reasons for any underpayment of generator fees which are due and payable, and shall include in the generator fee structure report required by the section recommendations to simplify the generator fee system and maximize the payment and collection of these fees.

SEC. 15. 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 881

An act to amend Sections 25173.6, 25173.7, 25205.15, 25244.13, 25244.14, 25244.22, and 57000 of, and to add Sections 25244.15.1, 25244.17.1, 25244.17.2, 25244.24, and 57007 to, the Health and Safety Code, relating to environmental protection.

[Approved by Governor September 26, 1998. Filed with Secretary of State September 28, 1998.]

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

SECTION 1. The purpose of this act is to provide direction and oversight to the Department of Toxic Substances Control for expenditure of one million fifty thousand dollars ($1,050,000) to be appropriated in the annual Budget Act commencing with the 1999–2000 fiscal year for expanded implementation of programs to encourage hazardous waste generators to implement pollution prevention measures. It is the intent of the Legislature that these funds be used to expand the department's source reduction activities beyond existing activities associated with the preparation of source reduction evaluation reviews and plans and to encompass technical assistance and outreach activities on a larger scale for selected industry categories.

SEC. 2. Section 25173.6 of the Health and Safety Code is amended to read:

25173.6. (a) There is in the General Fund the Toxic Substances Control Account, which shall be administered by the director. In addition to any other money that may be appropriated by the Legislature to the Toxic Substances Control Account, all of the following shall be deposited in the account:

(1) The fees collected pursuant to Section 25205.6.

(2) The fees collected pursuant to Section 25187.2, to the extent that those fees are for oversight of a removal or remedial action taken under Chapter 6.8 (commencing with Section 25300) or Chapter 6.85 (commencing with Section 25396).

(3) Any fines or penalties collected pursuant to this chapter, Chapter 6.8 (commencing with Section 25300) or Chapter 6.85 (commencing with Section 25396), except as directed otherwise by Section 25192.

(4) Any interest earned upon money deposited in the Toxic Substances Control Account.

(5) All money recovered pursuant to Section 25360, except recoveries of amounts paid from the Hazardous Substance Cleanup Fund.

(6) All money recovered pursuant to Section 25380.

(7) Any reimbursements for funds expended from the Toxic Substances Control Account for services provided by the department, including, but not limited to, reimbursements required pursuant to Sections 25201.9 and 25343.

(8) Any money received from the federal government pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601, et seq.).

(9) Any money received from responsible parties for remedial action or removal at a specific site, except as otherwise provided by law.

(b) The funds deposited in the Toxic Substances Control Account may be appropriated to the department for the following purposes:

(1) The administration and implementation of the following:

(A) Chapter 6.8 (commencing with Section 25300), except that no funds may be expended from the Toxic Substances Control Account for purposes of Section 25354.5.

(B) Chapter 6.85 (commencing with Section 25396).

(C) Chapter 6.11 (commencing with Section 25404), on and before June 30, 1999.

(D) Article 10 (commencing with Section 7710) of Chapter 1 of Division 4 of the Public Utilities Code, to the extent the department has been delegated responsibilities by the secretary for implementing that article.

(2) The administration of the following units within the department:

(A) The Human and Ecological Risk Division.

(B) The Hazardous Materials Laboratory.

(C) The Office of Pollution Prevention and Technology Development.

(3) For allocation to the Office of Environmental Health Hazard Assessment, pursuant to an interagency agreement, to assist the department as needed in administering the programs described in subparagraphs (A) and (B) of paragraph (1).

(4) For allocation to the State Board of Equalization to pay refunds of fees collected pursuant to Section 43054 of the Revenue and Taxation Code.

(5) For the state share mandated pursuant to paragraph (3) of subsection (c) of Section 104 of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9404(c)(3)).

(6) For the purchase by the state, or by any local agency with the prior approval of the director, of hazardous substance response equipment and other preparations for response to a release of hazardous substances. However, all equipment shall be purchased in a cost-effective manner after consideration of the adequacy of existing equipment owned by the state or the local agency, and the availability of equipment owned by private contractors.

(7) For payment of all costs of removal and remedial action incurred by the state, or by any local agency with the approval of the director, in response to a release or threatened release of a hazardous substance, to the extent the costs are not reimbursed by the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601, et seq.).

(8) For payment of all costs of actions taken pursuant to subdivision (b) of Section 25358.3, to the extent that these costs are not paid by the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601, et seq.).

(9) For all costs incurred by the department in cooperation with the Agency for Toxic Substances and Disease Registry established pursuant to subsection (i) of Section 104 of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9604(i)) and all costs of health effects studies undertaken regarding specific sites or specific substances at specific sites. Funds appropriated for this purpose shall not exceed five hundred thousand dollars ($500,000) in any single fiscal year. However, these actions shall not duplicate reasonably available federal actions and studies.

(10) For repayment of the principal of, and interest on, bonds sold pursuant to Article 7.5 (commencing with Section 25385).

(11) For the reasonable and necessary administrative costs and expenses of the Hazardous Substance Cleanup Arbitration Panel created pursuant to Section 25356.2.

(12) Direct site remediation costs.

(13) For the department's expenses for staff to perform oversight of investigations, characterizations, removals, remediations, or long-term operation and maintenance.

(14) For the administration and collection of the fees imposed pursuant to Section 25205.6.

(c) The funds deposited in the Toxic Substances Control Account may be appropriated by the Legislature to the office of the Attorney General for the support of the Toxic Substance Enforcement Program in the office of the Attorney General, in carrying out the purposes of Chapter 6.8 (commencing with Section 25300) and Chapter 6.85 (commencing with Section 25396). Expenditures for the purposes of this subdivision are not subject to an interagency or interdepartmental agreement.

(d) The director shall expend federal funds in the Toxic Substances Control Account consistent with the requirements specified in Section 114 of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601), upon appropriation by the Legislature, for the purposes for which they were provided to the state.

(e) Money in the Toxic Substances Control Account shall not be expended to conduct removal or remedial actions if any significant portion of the hazardous substances to be removed or remedied originated from a source outside the state.

(f) The Director of Finance, upon request of the director, may make a loan from the General Fund to the Toxic Substances Control Account to meet cash needs. The loan shall be subject to the repayment provisions of Section 16351 of the Government Code and the interest provisions of Section 16314 of the Government Code.

SEC. 3. Section 25173.7 of the Health and Safety Code is amended to read:

25173.7. (a) It is the intent of the Legislature that funds deposited in the Toxic Substances Control Account shall be appropriated in the annual Budget Act each year in the following manner:

(1) Not less than six million seven hundred fifty thousand dollars ($6,750,000) to the Site Remediation Account in the General Fund for direct site remediation costs, as defined in Section 25337. The amount specified in this paragraph shall be increased in any fiscal year by the amount of increased revenues specified by the Legislature in the Budget Act for that fiscal year pursuant to subdivision (f) of Section 25205.6.

(2) Not less than four hundred thousand dollars ($400,000) to the Expedited Site Remediation Trust Fund in the State Treasury, created pursuant to subdivision (a) of Section 25399.1, for purposes of paying the orphan share of response costs pursuant to Chapter 6.85 (commencing with Section 25396).

(3) Not more than five hundred thousand dollars ($500,000) for purposes of the administration and collection of the fees specified in paragraph (14) of subdivision (b) of Section 25173.6.

(4) Commencing with the 1999–2000 fiscal year and annually thereafter, not less than one million fifty thousand dollars ($1,050,000) for purposes of establishing and implementing a program pursuant to Sections 25244.15.1, 25244.17.1, 25244.17.2, 25244.22, and 25244.24 to encourage hazardous waste generators to implement pollution prevention measures. Funds not appropriated as specified in paragraphs (1) to (4), inclusive, may be appropriated for any of the purposes specified in subdivision (b) of Section 25173.6, except the purposes specified in subparagraph (C) of paragraph (1) of, and paragraph (14) of, subdivision (b) of Section 25173.6.

(b) The amounts specified in paragraphs (1) to (3), inclusive, of subdivision (a) are the amounts that the Legislature intends to appropriate for the 1998–99 fiscal year for the purposes specified in those paragraphs, and the amount specified in paragraph (4) of subdivision (a) is the amount the Legislature intends to appropriate for the 1999–2000 fiscal year for the purposes specified in that paragraph. Beginning with the 1999–2000 fiscal year, and for each fiscal year thereafter, the amounts specified in paragraphs (1) to (3), inclusive, of subdivision (a), and beginning with the 2000–01 fiscal year, and for each fiscal year thereafter, the amount specified in paragraph (4) of subdivision (a) shall be adjusted 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.

SEC. 4. Section 25205.15 of the Health and Safety Code is amended to read:

25205.15. (a) Except for the first four manifests used in a calendar year by a business with less than 100 employees, and except as provided in subdivision (b), the department shall impose a fee of twelve dollars ($12) for each California Uniform Hazardous Waste Manifest form used on or before June 30, 1998, by any person in the following manner:

(1) The Governor may order the department to refund three-quarters of the amount of manifest fees paid on manifests used during the 1991 calendar year.

(2) (A) On and after the 1992 calendar year, for all manifests used on or before June 30, 1998, the manifest fee shall be assessed on all manifests used in the calendar year ending prior to the start of the fiscal year in which the billing occurs.

(B) Notwithstanding subparagraph (A), the department may bill a person for a manifest used from January 1, 1998, to June 30, 1998, inclusive, during the period beginning January 1, 1999, and ending June 30, 1999, inclusive.

(b) The manifest fee for any manifest that is used on or before June 30, 1998, solely for wastes that are to be recycled is six dollars ($6)

and the total amount of manifest fees paid in a calendar year for these manifests shall not exceed five thousand dollars ($5,000) for each hazardous waste identification number issued either by the department or the Environmental Protection Agency.

(c) Except as provided in paragraph (3), after June 30, 1998, in addition to any fees to cover printing and distribution costs, the department shall impose a manifest fee of seven dollars and fifty cents ($7.50) for each California Hazardous Waste Manifest form or electronic equivalent used after June 30, 1998, by any person, in the following manner:

(1) Except as provided in paragraph (2), on and after July 1, 1998, the department shall bill generators for each California Uniform Hazardous Waste Manifest form, manifest number, or electronic equivalent used after June 30, 1998. The billing frequency specified by the department may range from monthly to annually, with the payment by the generator required within 30 days from the date of receipt of the billing, and shall be determined based on consultation with the regulated community. In preparing the bills, the department shall distinguish between manifests used solely for recycled hazardous wastes and those used for nonrecycled hazardous wastes. In determining the billing frequency, the department may take into account each person's volume of manifest usage.

(2) On or before July 1, 2000, the department shall determine if revenues from the manifest fee as collected pursuant to paragraph (1) will equal or exceed one million seven hundred thousand dollars ($1,700,000) for the 1999–2000 fiscal year. If the department determines that the manifest fee revenues will not equal or exceed one million seven hundred thousand dollars ($1,700,000) for the 1999–2000 fiscal year, the department shall do the following:

(A) Commencing July 1, 2000, implement a system to collect the manifest fee at the time of original sale of the manifest or distribution of manifest numbers or electronic equivalent to users by the department for all manifests that will be used after June 30, 2000.

(B) On or before July 1, 2000, implement a system for the use of manifests that distinguishes between manifests used solely for transporting hazardous wastes that are recycled and manifests used for transporting waste for any other purpose.

(3) (A) The manifest fee shall not be collected on the use of California Hazardous Waste Recycling Manifests that are used after June 30, 1998, solely for hazardous wastes that are recycled.

(B) If a person uses a manifest that reports that it is being used for hazardous wastes that are recycled for other types of hazardous waste, the person shall pay the manifest fee provided for in this subdivision and an additional error correction fee of twenty dollars ($20) per manifest, as required pursuant to Section 25160.5. However, the department shall provide the manifest user with a reasonable opportunity to notify the department of any incorrect use of the recycling manifest and provide the department with the

appropriate manifest fee payment without additional fines, penalties, or payment of the error correction fee.

(4) The department may adopt regulations to implement and administer the manifest fee system imposed pursuant to this subdivision.

(d) The department shall expend the sum of one million dollars ($1,000,000) from the manifest fees deposited in the Hazardous Waste Control Account, upon appropriation by the Legislature in the annual Budget Act, to cover the one-time cost of implementing changes to the hazardous waste manifest tracking system during the 1998–99 fiscal year.

(e) The manifest fees shall be deposited in the Hazardous Waste Control Account and be available for expenditure, upon appropriation by the Legislature.

SEC. 4.5. Section 25205.15 of the Health and Safety Code is amended to read:

25205.15. (a) Except for the first four manifests used in a calendar year by a business with less than 100 employees, and except as provided in subdivision (b), the department shall impose a fee of twelve dollars ($12) for each California Uniform Hazardous Waste Manifest form used on or before June 30, 1998, by any person in the following manner:

(1) The Governor may order the department to refund three-quarters of the amount of manifest fees paid on manifests used during the 1991 calendar year.

(2) (A) On and after the 1992 calendar year, for all manifests used on or before June 30, 1998, the manifest fee shall be assessed on all manifests used in the calendar year ending prior to the start of the fiscal year in which the billing occurs.

(B) Notwithstanding subparagraph (A), the department may bill a person for a manifest used from January 1, 1998, to June 30, 1998, inclusive, during the period beginning January 1, 1999, and ending June 30, 1999, inclusive.

(b) The manifest fee for any manifest that is used on or before June 30, 1998, solely for wastes that are to be recycled is six dollars ($6) and the total amount of manifest fees paid in a calendar year for these manifests shall not exceed five thousand dollars ($5,000) for each hazardous waste identification number issued either by the department or the Environmental Protection Agency.

(c) Except as provided in paragraph (3), after June 30, 1998, in addition to any fees to cover printing and distribution costs, the department shall impose a manifest fee of seven dollars and fifty cents ($7.50) for each California Hazardous Waste Manifest form or electronic equivalent used after June 30, 1998, by any person, in the following manner:

(1) Except as provided in paragraph (2), on and after July 1, 1998, the department shall bill generators for each California Uniform Hazardous Waste Manifest form, manifest number, or electronic

equivalent used after June 30, 1998. The billing frequency specified by the department may range from monthly to annually, with the payment by the generator required within 30 days from the date of receipt of the billing, and shall be determined based on consultation with the regulated community. In preparing the bills, the department shall distinguish between manifests used solely for recycled hazardous wastes and those used for nonrecycled hazardous wastes. In determining the billing frequency, the department may take into account each person's volume of manifest usage.

(2) On or before July 1, 2000, the department shall determine if revenues from the manifest fee as collected pursuant to paragraph (1) will equal or exceed one million seven hundred thousand dollars ($1,700,000) for the 1999–2000 fiscal year. If the department determines that the manifest fee revenues will not equal or exceed one million seven hundred thousand dollars ($1,700,000) for the 1999–2000 fiscal year, the department shall instead, commencing July 1, 2000, implement a system to collect the manifest fee at the time of original sale of the manifest or distribution of manifest numbers or electronic equivalent to users by the department for all manifests that will be used after June 30, 2000. In developing this system, the department shall consult with the regulated community and shall take into consideration the potential economic effects that a system of collecting manifest fees at the point of original sale may have on generators and transporters.

(3) (A) The manifest fee shall not be collected on the use of California Hazardous Waste Recycling Manifests that are used solely for hazardous wastes that are recycled.

(B) On and after January 1, 1999, the manifest fee for each California Uniform Hazardous Waste Manifest form used after December 31, 1998, solely for hazardous waste derived from air compliance solvents, shall be three dollars and fifty cents ($3.50). This fee is in addition to any fees charged to cover printing and distribution costs.

(4) The department shall implement a system for the use of manifests that, after January 1, 1999, distinguishes among recycling manifests used solely for hazardous wastes that are to be recycled, manifests used solely to transport hazardous waste derived from air compliance solvents, and general manifests that may be used for transporting waste for any purpose.

(5) (A) If a person erroneously reports on a California Uniform Hazardous Waste Manifest that the manifest is being used for the transport of hazardous wastes that are being shipped for recycling or for the transport of hazardous wastes derived from air compliance solvents rather than the transport of other types of hazardous waste, the person shall pay the seven dollars and fifty cents ($7.50) manifest fee and an additional error correction fee of twenty dollars ($20) per manifest, as required pursuant to Section 25160.5.

(B) Notwithstanding subparagraph (A), the department shall provide the manifest user with a reasonable opportunity to notify the department of any incorrect use of a manifest, as described in subparagraph (A), and to provide the department with the appropriate manifest fee payment without additional fines, penalties, or payment of the error correction fee.

(6) The department may adopt regulations to implement and administer the manifest fee system imposed pursuant to this subdivision.

(d) (1) The department shall expend the sum of one million dollars ($1,000,000) from the manifest fees deposited in the Hazardous Waste Control Account, upon appropriation by the Legislature in the annual Budget Act, to cover the one-time cost of implementing changes to the hazardous waste manifest tracking system during the 1998–99 fiscal year.

(2) On and after July 1, 1999, commencing with 1999–2000 fiscal year and annually thereafter, the department shall expend, upon appropriation by the Legislature in the annual Budget Act, not less than one million fifty thousand dollars ($1,050,000) from the manifest fees, deposited in the Hazardous Waste Control Account, to establish a program to encourage hazardous waste generators to implement pollution prevention measures. The program shall be administered pursuant to administrative and expenditure criteria to be established by the Legislature.

(e) The manifest fees shall be deposited in the Hazardous Waste Control Account and be available for expenditure, upon appropriation by the Legislature.

(f) For purposes of this section, "air compliance solvent" means a solvent, including aqueous solutions, that are required or approved for use by regulations adopted by the State Air Resources Board, an air pollution control district, or an air quality management district, to meet air emission standards adopted by that board or district and, pursuant to those regulations, is required to be used instead of another solvent that was used and recycled prior to the adoption of those regulations.

SEC. 5. Section 25244.13 of the Health and Safety Code is amended to read:

25244.13. The Legislature finds and declares as follows:

(a) Existing law requires the department and the State Water Resources Control Board to promote the reduction of generated hazardous waste. This policy, in combination with hazardous waste land disposal bans, requires the rapid development of new programs and incentives for achieving the goal of optimal minimization of the generation of hazardous wastes. Substantial improvements and additions to the state's hazardous waste reduction program are required to be made if these goals are to be achieved.

(b) Hazardous waste source reduction provides substantial benefits to the state's economy by maximizing use of materials,

avoiding generation of waste materials, improving business efficiency, enhancing revenues of companies that provide products and services in the state, increasing the economic competitiveness of businesses located in the state, and protecting the state's precious and valuable natural resources.

(c) It is the intent of the Legislature to expand the state's hazardous waste source reduction activities beyond those directly associated with source reduction evaluation reviews and plans. The expanded program, which is intended to accelerate reduction in hazardous waste generation, shall include programs to promote implementation of source reduction measures using education, outreach, and other effective voluntary techniques demonstrated in California or other states.

(d) It is the intent of the Legislature for the department to maximize the use of its available resources in implementing the expanded source reduction program through cooperation with other entities, including, but not limited to, CUPAs, small business development corporations, business environmental assistance centers, and other regional and local government environmental programs. To the extent feasible, the department shall utilize cooperative programs with entities that routinely contact small business to expand its support of small business source reduction activities.

(e) It is the goal of this article to do all of the following:

(1) Reduce the generation of hazardous waste.

(2) Reduce the release into the environment of chemical contaminants which have adverse and serious health or environmental effects.

(3) Document hazardous waste management information and make that information available to state and local government.

(f) It is the intent of this article to promote the reduction of hazardous waste at its source, and wherever source reduction is not feasible or practicable, to encourage recycling. Where it is not feasible to reduce or recycle hazardous waste, the waste should be treated in an environmentally safe manner to minimize the present and future threat to health and the environment.

(g) It is the intent of the Legislature not to preclude the regulation of environmentally harmful releases to all media, including air, land, surface water, and groundwater, and to encourage and promote the reduction of these releases to air, land, surface water, and groundwater.

(h) It is the intent of the Legislature to encourage all state departments and agencies, especially the State Water Resources Control Board, the California regional water quality control boards, the State Air Resources Board, the air pollution control districts, and the air quality management districts, to promote the reduction of environmentally harmful releases to all media.

SEC. 6. Section 25244.14 of the Health and Safety Code is amended to read:

25244.14. For purposes of this article, the following definitions apply:

(a) "Advisory committee" means the California Source Reduction Advisory Committee established pursuant to Section 25244.15.1.

(b) "Appropriate local agency" means a county, city, or regional association that has adopted a hazardous waste management plan pursuant to Article 3.5 (commencing with Section 25135).

(c) "Hazardous waste management approaches" means approaches, methods, and techniques of managing the generation and handling of hazardous waste, including source reduction, recycling, and the treatment of hazardous waste.

(d) "Hazardous waste management performance report" or "report" means the report required by subdivision (b) of Section 25244.20 to document and evaluate the results of hazardous waste management practices.

(e) (1) "Source reduction" means one of the following:

(A) Any action that causes a net reduction in the generation of hazardous waste.

(B) Any action taken before the hazardous waste is generated that results in a lessening of the properties which cause it to be classified as a hazardous waste.

(2) "Source reduction" includes, but is not limited to, all of the following:

(A) "Input change," which means a change in raw materials or feedstocks used in a production process or operation so as to reduce, avoid, or eliminate the generation of hazardous waste.

(B) "Operational improvement," which means improved site management so as to reduce, avoid, or eliminate the generation of hazardous waste.

(C) "Production process change," which means a change in a process, method, or technique which is used to produce a product or a desired result, including the return of materials or their components, for reuse within the existing processes or operations, so as to reduce, avoid, or eliminate the generation of hazardous waste.

(D) "Product reformulation," which means changes in design, composition, or specifications of end products, including product substitution, so as to reduce, avoid, or eliminate the generation of hazardous waste.

(3) "Source reduction" does not include any of the following:

(A) Actions taken after a hazardous waste is generated.

(B) Actions that merely concentrate the constituents of a hazardous waste to reduce its volume or that dilute the hazardous waste to reduce its hazardous characteristics.

(C) Actions that merely shift hazardous wastes from one environmental medium to another environmental medium.

(D) Treatment.

(f) "Source reduction evaluation review and plan" or "review and plan" means a review conducted by the generator of the processes, operations, and procedures in use at a generator's site, in accordance with the format established by the department pursuant to subdivision (a) of Section 25244.16, and that does both of the following:

(1) Determines any alternatives to, or modifications of, the generator's processes, operations, and procedures that may be implemented to reduce the amount of hazardous waste generated.

(2) Includes a plan to document and implement source reduction measures for the hazardous wastes specified in paragraph (1) that are technically feasible and economically practicable for the generator, including a reasonable implementation schedule.

(g) "SIC Code" has the same meaning as defined in Section 25501.

(h) "Hazardous waste," "person," "recycle," and "treatment" have the same meaning as defined in Article 2 (commencing with Section 25110).

SEC. 7. Section 25244.15.1 is added to the Health and Safety Code, to read:

25244.15.1. (a) The California Source Reduction Advisory Committee is hereby created and consists of the following members:

(1) The Executive Director of the State Air Resources Board, as an ex officio member.

(2) The Executive Director of the State Water Resources Control Board, as an ex officio member.

(3) The Director of Toxic Substances Control, as an ex officio member.

(4) The Executive Director of the Integrated Waste Management Board, as an ex officio member.

(5) The Chairperson of the California Environmental Policy Council established pursuant to Section 71017 of the Public Resources Code, as an ex officio member.

(6) Ten public members with experience in source reduction as appointed by the department. These public members shall include all of the following:

(A) Two representatives of local governments from different regions of the state.

(B) One representative of a publicly owned treatment works.

(C) Two representatives of industry.

(D) One representative of small business.

(E) One representative of organized labor.

(F) Two representatives of statewide environmental advocacy organizations.

(G) One representative of a statewide public health advocacy organization.

(7) The department may appoint up to two additional public members with experience in source reduction and detailed

knowledge of one of the priority categories of generators selected in accordance with Section 25244.17.1.

(b) The advisory committee shall select one member to serve as chairperson.

(c) The members of the advisory committee shall serve without compensation, but each member, other than officials of the state, shall be reimbursed for all reasonable expenses incurred in the performance of his or her duties, as authorized by the department.

(d) The advisory committee shall meet at least semiannually to provide a public forum for discussion and deliberation on matters pertaining to the implementation of this chapter.

(e) The advisory committee's responsibilities shall include, but not be limited to, the following:

(1) Reviewing and providing consultation and guidance in the preparation of the work plan required by Section 25244.22.

(2) Evaluating the performance and progress of the department's source reduction program.

(3) Making recommendations to the department concerning program activities and funding priorities, and legislative changes, if needed.

(f) The advisory committee established by this section shall be in existence until April 15, 2002, by which date the department shall, in consultation with the advisory committee, evaluate the role and activities of the advisory committee and determine if the committee is beneficial to the implementation of this article. On and after April 15, 2002, the advisory committee shall continue to exist and operate to the extent that the department, in consultation with the advisory committee, determines the advisory committee continues to be beneficial to the operation of the department's source reduction programs.

SEC. 8. Section 25244.17.1 is added to the Health and Safety Code, to read:

25244.17.1. The department shall establish a technical assistance and outreach program to promote implementation of model source reduction measures in priority industry categories.

(a) Every two years, in the work plan required by Section 25244.22, the department shall, in consultation with the advisory committee, select at least two priority categories of generators by SIC Code. At least one selected category of generators shall be taken from the list of categories previously selected by the department under Section 25244.18. At least one selected category of generators shall be a category that consists primarily of small businesses.

(b) For each selected priority industry category, the department shall implement a cooperative source reduction technical assistance and outreach program to include the following elements:

(1) The department shall use available resources, including reports prepared pursuant to paragraph (4) of subdivision (a) of Section 25244.18 and information on source reduction methods from

federal, state, and local governments and industry associations and industry members, to identify a set of model source reduction measures for each industry category.

(2) The department shall determine, with the assistance of the advisory committee, the most effective technical assistance and outreach methods to promote implementation of the model source reduction measures identified in paragraph (1).

(3) The department shall develop a plan and schedule to implement the technical assistance and outreach measures before the next biennial work plan. The measures may include, but are not limited to, all of the following:

(A) Holding, presenting at, or cosponsoring workshops, conferences, technology fairs, and other promotional events.

(B) Developing and distributing educational materials, such as short descriptions of successful source reduction projects.

(C) Developing checklists, training manuals, technical resource manuals and using those resources to train CUPAs, small business development corporations, business environmental assistance centers, and other regional and local government environmental programs.

(D) Preparing and distributing resource lists, such as lists of vendors, consultants, or providers of financial assistance for source reduction projects.

(E) Serving as an information clearinghouse to support telephone and onsite consultations with businesses and local governments.

(4) For industry categories that include primarily large or technically complex businesses, the source reduction technical assistance and outreach program shall emphasize activities that involve direct communication between department staff and industry members. For these industry categories, the department shall communicate with representatives of 80 percent of the state's companies in the category. For categories that consist primarily of small businesses, the cooperative source reduction program shall emphasize providing industry-specific training and resources to CUPAs, small business development corporations, business environmental assistance centers, and other regional and local government environmental programs for use in their inspections and other direct communications with businesses.

(c) While conducting activities under this section, the department shall coordinate its activities with appropriate industry and professional associations.

(d) The department shall coordinate activities under this section with grants made under Sections 25244.5 and 25244.11.5.

SEC. 9. Section 25244.17.2 is added to the Health and Safety Code, to read:

25244.17.2. The department shall expand the department's source reduction program to provide source reduction training and resources to CUPAs, small business development corporations,

business environmental assistance centers, and other regional and local government environmental programs so that they can provide technical assistance to generators in identifying and applying methods of source reduction.

(a) The program expanded pursuant to this section shall emphasize activities necessary to implement Sections 25244.17 and 25244.17.1.

(b) The department shall determine, in consultation with the advisory committee, the most effective methods to promote implementation of source reduction education programs by CUPAs, small business development corporations, business environmental assistance centers, and other regional and local government environmental programs. Program elements may include, but are not limited to, all of the following:

(1) Sponsoring workshops, conferences, technology fairs, and other training events.

(2) Sponsoring regional training groups, such as the regional hazardous waste reduction committees.

(3) Developing and distributing educational materials, such as short descriptions of successful source reduction projects and materials explaining how source reduction has been used by businesses to achieve compliance with environmental laws enforced by local governments.

(4) Developing site review checklists, training manuals, and technical resource manuals and using those resources to train CUPAs, small business development corporations, business environmental assistance centers, and other regional and local government environmental programs.

(5) Preparing and distributing resource lists such as lists of vendors, consultants, or providers of financial assistance for source reduction projects.

(6) Serving as an information clearinghouse to support telephone and onsite consultants with local governments.

(c) The department shall coordinate activities under this section with grants made under Section 25244.11.5.

(d) Each fiscal year, the department shall provide training and information resources to at least 90 percent of CUPAs.

SEC. 10. Section 25244.22 of the Health and Safety Code is amended to read:

25244.22. Commencing May 1, 2000, and on or before January 15 of every other year thereafter, the department shall prepare, and make available for public review within five days thereafter, a draft work plan for the department's operations and activities in carrying out this article. The department shall prepare the work plan in consultation with the advisory committee and with other interested parties, including local government, industry, labor, health, and environmental organizations. After holding a public meeting of the advisory committee to discuss the draft work plan, the department

shall finalize the work plan on or before June 15, 2000, and on or before April 1 of every other year thereafter. The department may include this work plan within the report required pursuant to Section 25171. This work plan shall include, but not be limited to, all of the following information:

(a) A summary analysis of readily available data on the state's hazardous waste generation and management patterns. The analysis shall include information from various data sources including hazardous waste manifests, biennial generator reports, and United States Environmental Protection Agency Toxics Release Inventory reports. The department shall estimate the quantities of hazardous waste generated in the state, by hazardous waste stream, the amounts of hazardous waste generated in the state by industry SIC Code, and the amounts of hazardous waste state generators sent offsite for management, by management method.

(b) An evaluation of hazardous waste source reduction progress in this state, using the data summary analysis prepared pursuant to subdivision (a).

(c) Recommendations for legislation.

(d) Identification of any state, federal, or private economic and financial incentives that can best accelerate and maximize the research and development of source reduction and other hazardous waste management technologies and approaches.

(e) The status, funding, and results of all research projects.

(f) A detailed summary of the extent to which the statewide goal of 5 percent per year reduction of the generation of hazardous wastes, pursuant to subdivision (e) of Section 25244.15, has been attained, and a detailed summary of the extent to which different categories of facilities have attained the numerical goals established pursuant to paragraph (9) of subdivision (b) of Section 25244.19. This summary, which shall use the data summary analysis prepared pursuant to subdivision (a), shall include an evaluation by the department of the reasons why these goals have or have not been attained, including an evaluation of the impact of economic growth or decline and changes in production patterns, and a list of appropriate recommendations designed to ensure attainment of these goals.

(g) An outline of the department's operations and activities under this article proposed for the next two-year period. The department shall use the data summary analysis prepared pursuant to subdivision (a) to select hazardous waste stream and industries for source reduction efforts. When identifying activities for inclusion in the work plan, the department shall also consider potential benefits to human health and the environment, available resources, feasibility of applying source reduction techniques to reduce selected hazardous waste streams and to reduce hazardous wastes generated by selected industries, and availability of related resources from other

entities, such as other states, the federal government, local governments, and other organizations.

SEC. 11. Section 25244.24 is added to the Health and Safety Code, to read:

25244.24. (a) For purposes of this section the following definitions shall apply:

(1) "Program" means the voluntary program to reduce hazardous waste generation established by this section.

(2) "Release" means a release of a chemical into the environment in any manner and by any means. "Release" includes, but is not limited to, any release authorized or permitted pursuant to a statute, ordinance, regulation, or rule of any federal, state, local, or regional agency or government or by a permit, license, variance or other authorization from the agency or government.

(b) On or before October 1, 2000, the department shall, in consultation with the advisory committee established pursuant to Section 25244.15.1, conduct an inventory and analysis of low-cost voluntary programs that are, or have been conducted by other states, the federal government, or local government entities to reduce hazardous waste generation and other environmental releases of toxic chemicals, and shall develop recommendations for programs that would be effective and feasible in California, based on the inventory and analysis.

(c) In consultation with the advisory committee, large businesses, and the public, the department shall develop a low-cost voluntary program to further reduce generation of hazardous waste by large businesses in California. The program shall be designed to promote cooperative relationships between California business and the department, while creating a significant environmental benefit from reduced hazardous waste generation. The department shall include the program in the work plan required by Section 25244.22 on or before January 15, 2002.

(d) In designing and implementing the program the department shall take into consideration all of the following:

(1) Estimates of the volumes of potential reductions of hazardous waste generation and other possible program benefits.

(2) The types of facilities expected to participate and their current hazardous waste generation and other releases of toxic chemicals into the environment.

(3) The potential for reductions in hazardous waste generation resulting in an increase in releases of toxic chemicals to a different environmental medium.

(4) The potential public health and environmental benefits of the program.

(5) Methods for publicizing the program and encouraging facilities throughout the state to participate in the program.

(6) Providing appropriate public recognition of facilities that successfully are participating in the program.

(7) Establishing a means for monitoring the progress that each facility participating in the program is making toward implementing the program.

(8) Establishing methods for evaluating the implementation of the inventory, analysis, and program and for reporting on the progress of the program in the work plan required pursuant to Section 25244.22.

(9) Procedures for providing technical support to program participants to assist with the implementation of the program.

(e) Participation in the program shall not create a presumption that the participating facility has determined that any chemical release reduction measure is technically feasible or economically practicable pursuant to any other provision of law.

(f) Actions of the department pursuant to this section are exempt from the requirements of Chapter 3.5 (commencing with Section 11340) of Division 3 of Title 2 of the Government Code.

(g) If, on the basis of the inventory and analysis required by in subdivision (b), the department finds that it is not possible to design and implement, at relatively low cost, a voluntary program to promote cooperative relationships between California business and the department, while creating a significant environmental benefit, and the advisory committee concurs with this finding, the department is not required to implement the program.

SEC. 12. Section 57000 of the Health and Safety Code is amended to read:

57000. For purposes of this division, the following terms have the following meaning:

(a) "Agency" means the California Environmental Protection Agency.

(b) "Council" means the California Environmental Policy Council established by Section 71017 of the Public Resources Code.

(c) "Secretary" means the Secretary for Environmental Protection.

SEC. 13. Section 57007 is added to the Health and Safety Code, to read:

57007. (a) The agency, and the offices, boards, and departments within the agency, shall institute quality government programs to achieve increased levels of environmental protection and the public's satisfaction through improving the quality, efficiency, and cost-effectiveness of the state programs that implement and enforce state and federal environmental protection statutes. These programs shall be designed to increase the level of environmental protection while expediting decisionmaking and producing cost savings. The secretary shall create an advisory group comprised of state and local government, business, environmental, and consumer representatives experienced in quality management to provide guidance in that effort. The secretary shall develop a model quality management program that local agencies charged with

implementing air quality, water quality, toxics, solid waste, and hazardous waste laws and regulations may use at their discretion.

(b) Notwithstanding Section 7550.5 of the Government Code, the agency, and each board, department, and office within the agency, shall submit a yearly report to the Governor and Legislature, as part of the annual budget process, reporting on the extent to which these state agencies have attained their performance objectives, and on their continuous quality improvement efforts.

(c) Nothing in this section abrogates any collective bargaining agreement or interferes with any established employee rights.

(d) For purposes of this section, "quality government program" means all of the following:

(1) A process for obtaining the views of employees, the regulated community, the public, environmental organizations, and governmental officials with regard to the performance, vision, and needs of the agency implementing the quality government program.

(2) A process for developing measurable performance objectiveness using the views of the persons and organizations specified in paragraph (1).

(3) Processes for continually improving quality and for training agency personnel, using the information obtained from implementing paragraphs (1) and (2).

SEC. 14. Section 4.5 of this bill incorporates amendments to Section 25205.15 of the Health and Safety Code proposed by both this bill and AB 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 25205.15 of the Health and Safety Code, and (3) this bill is enacted after AB 2067, in which case Section 4 of this bill shall not become operative.

SEC. 15. 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 882

An act to amend Sections 25173.6, 25173.7, 25174, 25187.5, 25205.6, 25205.7, 25205.15, 25354, and 25354.5 of, to amend and repeal Section

25174.8 of, and to add Section 25174.9 to, the Health and Safety Code, to amend Section 43551 of, to add Sections 43055 and 43552 to, the Revenue and Taxation Code, and to amend Section 53 of Chapter 870 of the Statutes of 1997, relating to hazardous waste and substances.

[Approved by Governor September 26, 1998. Filed with Secretary of State September 28, 1998.]

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

SECTION 1. Section 25173.6 of the Health and Safety Code is amended to read:

25173.6. (a) There is in the General Fund the Toxic Substances Control Account, which shall be administered by the director. In addition to any other money that may be appropriated by the Legislature to the Toxic Substances Control Account, all of the following shall be deposited in the account:

(1) The fees collected pursuant to Section 25205.6.

(2) The fees collected pursuant to Section 25187.2, to the extent that those fees are for oversight of a removal or remedial action taken under Chapter 6.8 (commencing with Section 25300) or Chapter 6.85 (commencing with Section 25396).

(3) Any fines or penalties collected pursuant to this chapter, Chapter 6.8 (commencing with Section 25300) or Chapter 6.85 (commencing with Section 25396), except as directed otherwise by Section 25192.

(4) Any interest earned upon money deposited in the Toxic Substances Control Account.

(5) All money recovered pursuant to Section 25360, except recoveries of amounts paid from the Hazardous Substance Cleanup Fund.

(6) All money recovered pursuant to Section 25380.

(7) Any reimbursements for funds expended from the Toxic Substances Control Account for services provided by the department, including, but not limited to, reimbursements required pursuant to Sections 25201.9 and 25343.

(8) Any money received from the federal government pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601, et seq.).

(9) Any money received from responsible parties for remedial action or removal at a specific site, except as otherwise provided by law.

(b) The funds deposited in the Toxic Substances Control Account may be appropriated to the department for the following purposes:

(1) The administration and implementation of the following:

(A) Chapter 6.8 (commencing with Section 25300), except that no funds may be expended from the Toxic Substances Control Account for purposes of Section 25354.5.

(B) Chapter 6.85 (commencing with Section 25396).

(C) Chapter 6.11 (commencing with Section 25404), on and before June 30, 1999.

(D) Article 10 (commencing with Section 7710) of Chapter 1 of Division 4 of the Public Utilities Code, to the extent the department has been delegated responsibilities by the secretary for implementing that article.

(2) The administration of the following units within the department:

(A) The Human and Ecological Risk Division.

(B) The Hazardous Materials Laboratory.

(C) The Office of Pollution Prevention and Technology Development.

(3) For allocation to the Office of Environmental Health Hazard Assessment, pursuant to an interagency agreement, to assist the department as needed in administering the programs described in subparagraphs (A) and (B) of paragraph (1).

(4) For allocation to the State Board of Equalization to pay refunds of fees collected pursuant to Section 43054 of the Revenue and Taxation Code.

(5) For the state share mandated pursuant to paragraph (3) of subsection (c) of Section 104 of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9404(c)(3)).

(6) For the purchase by the state, or by any local agency with the prior approval of the director, of hazardous substance response equipment and other preparations for response to a release of hazardous substances. However, all equipment shall be purchased in a cost-effective manner after consideration of the adequacy of existing equipment owned by the state or the local agency, and the availability of equipment owned by private contractors.

(7) For payment of all costs of removal and remedial action incurred by the state, or by any local agency with the approval of the director, in response to a release or threatened release of a hazardous substance, to the extent the costs are not reimbursed by the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601, et seq.).

(8) For payment of all costs of actions taken pursuant to subdivision (b) of Section 25358.3, to the extent that these costs are not paid by the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601, et seq.).

(9) For all costs incurred by the department in cooperation with the Agency for Toxic Substances and Disease Registry established pursuant to subsection (i) of Section 104 of the federal

Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9604(i)) and all costs of health effects studies undertaken regarding specific sites or specific substances at specific sites. Funds appropriated for this purpose shall not exceed five hundred thousand dollars ($500,000) in any single fiscal year. However, these actions shall not duplicate reasonably available federal actions and studies.

(10) For repayment of the principal of, and interest on, bonds sold pursuant to Article 7.5 (commencing with Section 25385).

(11) For the reasonable and necessary administrative costs and expenses of the Hazardous Substance Cleanup Arbitration Panel created pursuant to Section 25356.2.

(12) Direct site remediation costs.

(13) For the department's expenses for staff to perform oversight of investigations, characterizations, removals, remediations, or long-term operation and maintenance.

(14) For the administration and collection of the fees imposed pursuant to Section 25205.6.

(c) The funds deposited in the Toxic Substances Control Account may be appropriated by the Legislature to the office of the Attorney General for the support of the Toxic Substance Enforcement Program in the office of the Attorney General, in carrying out the purposes of Chapter 6.8 (commencing with Section 25300) and Chapter 6.85 (commencing with Section 25396). Expenditures for the purposes of this subdivision are not subject to an interagency or interdepartmental agreement.

(d) The director shall expend federal funds in the Toxic Substances Control Account consistent with the requirements specified in Section 114 of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601), upon appropriation by the Legislature, for the purposes for which they were provided to the state.

(e) Money in the Toxic Substances Control Account shall not be expended to conduct removal or remedial actions if any significant portion of the hazardous substances to be removed or remedied originated from a source outside the state.

(f) The Director of Finance, upon request of the director, may make a loan from the General Fund to the Toxic Substances Control Account to meet cash needs. The loan shall be subject to the repayment provisions of Section 16351 of the Government Code and the interest provisions of Section 16314 of the Government Code.

SEC. 2. Section 25173.7 of the Health and Safety Code is amended to read:

25173.7. (a) It is the intent of the Legislature that funds deposited in the Toxic Substances Control Account shall be appropriated in the annual Budget Act each year in the following manner:

(1) Not less than six million seven hundred fifty thousand dollars ($6,750,000) to the Site Remediation Account in the General Fund for direct site remediation costs, as defined in Section 25337. The amount specified in this paragraph shall be increased in any fiscal year by the amount of increased revenues specified by the Legislature in the Budget Act for that fiscal year pursuant to subdivision (f) of Section 25205.6.

(2) Not less than four hundred thousand dollars ($400,000) to the Expedited Site Remediation Trust Fund in the State Treasury, created pursuant to subdivision (a) of Section 25399.1, for purposes of paying the orphan share of response costs pursuant to Chapter 6.85 (commencing with Section 25396).

(3) Not more than five hundred thousand dollars ($500,000) for purposes of the administration and collection of the fees specified in paragraph (14) of subdivision (b) of Section 25173.6.

(4) Commencing with the 1999–2000 fiscal year and annually thereafter, not less than one million fifty thousand dollars ($1,050,000) to establish a program to encourage hazardous waste generators to implement pollution prevention measures. The program shall be administered pursuant to administrative and expenditure criteria established by the Legislature.

(5) Funds not appropriated as specified in paragraphs (1) to (4), inclusive, may be appropriated for any of the purposes specified in subdivision (b) of Section 25173.6, except the purposes specified in subparagraph (C) of paragraph (1) of, and paragraph (14) of, subdivision (b) of Section 25173.6.

(b) The amounts specified in paragraphs (1) to (3), inclusive, of subdivision (a) are the amounts that the Legislature intends to appropriate for the 1998–99 fiscal year for the purposes specified in those paragraphs, and the amount specified in paragraph (4) of subdivision (a) is the amount the Legislature intends to appropriate for the 1999–2000 fiscal year for the purposes specified in that paragraph. Beginning with the 1999–2000 fiscal year, and for each fiscal year thereafter, the amounts specified in paragraphs (1) to (3), inclusive, of subdivision (a), and beginning with the 2000–01 fiscal year, and for each fiscal year thereafter, the amount specified in paragraph (4) of subdivision (a) shall be adjusted 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.

SEC. 2.5. Section 25173.7 of the Health and Safety Code is amended to read:

25173.7. (a) It is the intent of the Legislature that funds deposited in the Toxic Substances Control Account shall be appropriated in the annual Budget Act each year in the following manner:

(1) Not less than six million seven hundred fifty thousand dollars ($6,750,000) to the Site Remediation Account in the General Fund for

direct site remediation costs, as defined in Section 25337. The amount specified in this paragraph shall be increased in any fiscal year by the amount of increased revenues specified by the Legislature in the Budget Act for that fiscal year pursuant to subdivision (f) of Section 25205.6.

(2) Not less than four hundred thousand dollars ($400,000) to the Expedited Site Remediation Trust Fund in the State Treasury, created pursuant to subdivision (a) of Section 25399.1, for purposes of paying the orphan share of response costs pursuant to Chapter 6.85 (commencing with Section 25396).

(3) Not more than five hundred thousand dollars ($500,000) for purposes of the administration and collection of the fees specified in paragraph (14) of subdivision (b) of Section 25173.6.

(4) Commencing with the 1999–2000 fiscal year and annually thereafter, not less than one million fifty thousand dollars ($1,050,000) for purposes of establishing and implementing a program pursuant to Sections 25244.15.1, 25244.17.1, 25244.17.2, 25244.22, and 25244.24 to encourage hazardous waste generators to implement pollution prevention measures.

(5) Funds not appropriated as specified in paragraphs (1) to (4), inclusive, may be appropriated for any of the purposes specified in subdivision (b) of Section 25173.6, except the purposes specified in subparagraph (C) of paragraph (1) of, and paragraph (14) of, subdivision (b) of Section 25173.6.

(b) The amounts specified in paragraphs (1) to (3), inclusive, of subdivision (a) are the amounts that the Legislature intends to appropriate for the 1998–99 fiscal year for the purposes specified in those paragraphs, and the amount specified in paragraph (4) of subdivision (a) is the amount the Legislature intends to appropriate for the 1999–2000 fiscal year for the purposes specified in that paragraph. Beginning with the 1999–2000 fiscal year, and for each fiscal year thereafter, the amounts specified in paragraphs (1) to (3), inclusive, of subdivision (a), and beginning with the 2000–01 fiscal year, and for each fiscal year thereafter, the amount specified in paragraph (4) of subdivision (a) shall be adjusted 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.

SEC. 3. Section 25174 of the Health and Safety Code, as amended by Section 9 of Chapter 870 of the Statutes of 1997, is amended to read:

25174. (a) There is in the General Fund the Hazardous Waste Control Account, which shall be administered by the director. In addition to any other money that may be deposited in the Hazardous Waste Control Account, pursuant to statute, all of the following amounts shall be deposited in the account:

(1) The fees collected pursuant to Sections 25174.1, 25205.2, 25205.5, 25205.15, and 25205.16.

(2) The fees collected pursuant to Section 25187.2, to the extent that those fees are for the oversight of corrective action taken under this chapter.

(3) Any interest earned upon the money deposited in the Hazardous Waste Control Account.

(4) Any money received from the federal government pursuant to the federal act.

(5) Any reimbursements for funds expended from the Hazardous Waste Control Account for services provided by the department pursuant to this chapter, including, but not limited to, the reimbursements required pursuant to Sections 25201.9 and 25205.7.

(b) The funds deposited in the Hazardous Waste Control Account may be appropriated by the Legislature, for expenditure as follows:

(1) To the department for the administration and implementation of this chapter.

(2) To the department for allocation to the State Board of Equalization to pay refunds of fees collected pursuant to Sections 43051 and 43053 of the Revenue and Taxation Code.

(3) To the department for the costs of performance or review of analyses of past, present, or potential environmental public health effects related to toxic substances, including extremely hazardous waste, as defined in Section 25115, and hazardous waste, as defined in Section 25117.

(4) (A) To the office of the Attorney General for the support of the Toxic Substance Enforcement Program in the office of the Attorney General, in carrying out the purposes of this chapter.

(B) Notwithstanding subdivision (c), expenditures for the purposes of this paragraph shall not be subject to an interagency or interdepartmental agreement.

(C) On or before October 1 of each year, the Attorney General shall report to the Legislature on the expenditure of any funds appropriated to the office of the Attorney General for the preceding fiscal year pursuant to this paragraph and subdivision (c) of Section 25173.6. The report shall include all of the following:

(i) A description of cases resolved by the office of the Attorney General through settlement or court order, including the monetary benefit to the department and the state.

(ii) A description of injunctions or other court orders benefiting the people of the state.

(iii) A description of any cases in which the Attorney General's Toxic Substance Enforcement Program is representing the department or the state against claims by defendants or responsible parties.

(iv) A description of other pending litigation handled by the Attorney General's Toxic Substance Enforcement Program.

(D) Nothing in subparagraph (C) shall require the Attorney General to report on any confidential or investigatory matter.

(5) To the department, on and after July 1, 1999, for administration and implementation of Chapter 6.11 (commencing with Section 25404).

(c) Except for the appropriation to the office of the Attorney General pursuant to paragraph (4) of subdivision (b), expenditures from the Hazardous Waste Control Account for support of state agencies other than the department shall, upon appropriation by the Legislature to the department, be subject to an interagency or interdepartmental agreement between the department and the state agency receiving the support.

(d) The department shall, at the time of the release of the annual Governor's Budget, describe the budgetary amounts proposed to be allocated to the State Board of Equalization, as specified in paragraph (2) of subdivision (b) and in paragraph (3) of subdivision (b) of Section 25173.6, for the upcoming fiscal year. With respect to expenditures for the purposes of paragraphs (1) and (3) of subdivision (b) and paragraphs (1) and (2) of subdivision (b) of Section 25173.6, the department shall also make available the budgetary amounts and allocations of staff resources of the department proposed for the following activities:

(1) The department shall identify, by permit type, the projected allocations of budgets and staff resources for hazardous waste facilities permits, including standardized permits, closure plans, and postclosure permits.

(2) The department shall identify, with regard to surveillance and enforcement activities, the projected allocations of budgets and staff resources for the following types of regulated facilities and activities:

(A) Hazardous waste facilities operating under a permit or grant of interim status issued by the department, and generator activities conducted at those facilities. This information shall be reported by permit type.

(B) Transporters.

(C) Response to complaints.

(3) The department shall identify the projected allocations of budgets and staff resources for both of the following activities:

(A) The registration of hazardous waste transporters.

(B) The operation and maintenance of the hazardous waste manifest system.

(4) The department shall identify, with regard to site mitigation and corrective action, the projected allocations of budgets and staff resources for the oversight and implementation of the following activities:

(A) Investigations and removal and remedial actions at military bases.

(B) Voluntary investigations and removal and remedial actions.

(C) State match and operation and maintenance costs, by site, at joint state and federally funded National Priority List Sites.

(D) Investigation, removal and remedial actions, and operation and maintenance at the Stringfellow Hazardous Waste Site.

(E) Investigation, removal and remedial actions, and operation and maintenance at the Casmalia Hazardous Waste Site.

(F) Investigations and removal and remedial actions at nonmilitary, responsible party lead National Priority List Sites.

(G) Preremedial activities under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Sec. 9601 et seq.).

(H) Investigations, removal and remedial actions, and operation and maintenance at state-only orphan sites.

(I) Investigations and removal and remedial actions at nonmilitary, non-National Priority List responsible party lead sites.

(J) Investigations, removal and remedial actions, and operation and maintenance at Expedited Remedial Action Program sites pursuant to Chapter 6.85 (commencing with Section 25396).

(K) Corrective actions at hazardous waste facilities.

(5) The department shall identify, with regard to the regulation of hazardous waste, the projected allocation of budgets and staff resources for the following activities:

(A) Determinations pertaining to the classification of hazardous wastes.

(B) Determinations for variances made pursuant to Section 25143.

(C) Other determinations and responses to public inquiries made by the department regarding the regulation of hazardous waste and hazardous substances.

(6) The department shall identify projected allocations of budgets and staff resources needed to do all of the following:

(A) Identify, remove, store, and dispose of, suspected hazardous substances or hazardous materials associated with the investigation of clandestine drug laboratories.

(B) Respond to emergencies pursuant to Section 25354.

(C) Create, support, maintain, and implement the railroad accident prevention and immediate deployment plan developed pursuant to Section 7718 of the Public Utilities Code.

(7) The department shall identify projected allocations of budgets and staff resources for the administration and implementation of the unified hazardous waste and hazardous materials regulatory program established pursuant to Chapter 6.11 (commencing with Section 25404).

(8) The department shall identify the total cumulative expenditures of the Regulatory Structure Update and Site Mitigation Update projects since their inception, and shall identify the total projected allocations of budgets and staff resources that are needed to continue these projects.

(9) The department shall identify the total projected allocations of budgets and staff resources that are necessary for all other activities proposed to be conducted by the department.

(e) Notwithstanding this chapter, or Part 22 (commencing with Section 43001) of Division 2 of the Revenue and Taxation Code, for any fees, surcharges, fines, penalties, and funds which are required to be deposited into the Hazardous Waste Control Account or the Toxic Substances Control Account, the department, with the approval of the Secretary for Environmental Protection, may take any of the following actions:

(1) Assume responsibility for, or enter into a contract with a private party or with another public agency, other than the State Board of Equalization, for the collection of any fees, surcharges, fines, penalties and funds described in subdivision (a) or otherwise described in this chapter or Chapter 6.8 (commencing with Section 25300), for deposit into the Hazardous Waste Control Account or the Toxic Substances Control Account.

(2) Administer, or by mutual agreement, contract with a private party or another public agency, for the making of those determinations and the performance of functions that would otherwise be the responsibility of the State Board of Equalization pursuant to this chapter, Chapter 6.8 (commencing with Section 25300), or Part 22 (commencing with Section 43001) of Division 2 of the Revenue and Taxation Code, if those activities and functions for which the State Board of Equalization would otherwise be responsible become the responsibility of the department or, by mutual agreement, the contractor selected by the department.

(f) If, pursuant to subdivision (e), the department, or a private party or another public agency, pursuant to a contract with the department, performs the determinations and functions that would otherwise be the responsibility of the State Board of Equalization, the department shall be responsible for ensuring that persons who are subject to the fees specified in subdivision (e) have equivalent rights to public notice and comment, and procedural and substantive rights of appeal, as afforded by the procedures of the State Board of Equalization pursuant to Part 22 (commencing with Section 43001) of Division 2 of the Revenue and Taxation Code. Final responsibility for the administrative adjustment of fee rates and the administrative appeal of any fees or penalty assessments made pursuant to this section may only be assigned by the department to a public agency.

(g) If, pursuant to subdivision (e), the department, or a private party or another public agency, pursuant to a contract with the department, performs the determinations and functions that would otherwise be the responsibility of the State Board of Equalization, the department shall have equivalent authority to make collections and enforce judgments as provided to the State Board of Equalization pursuant to Part 22 (commencing with Section 43001) of Division 2 of the Revenue and Taxation Code. Unpaid amounts, including penalties and interest, shall be a perfected and enforceable state tax lien in accordance with Section 43413 of the Revenue and Taxation Code.

(h) The department, with the concurrence of the Secretary for Environmental Protection, shall determine which administrative functions should be retained by the State Board of Equalization, administered by the department, or assigned to another public agency or private party pursuant to subdivisions (e), (f), and (g).

(i) The department may adopt regulations to implement subdivisions (e) to (h), inclusive.

(j) The Director of Finance, upon request of the director, may make a loan from the General Fund to the Hazardous Waste Control Account to meet cash needs. The loan shall be subject to the repayment provisions of Section 16351 of the Government Code and the interest provisions of Section 16314 of the Government Code.

(k) The department shall establish, within the Hazardous Waste Control Account, a reserve of at least one million dollars ($1,000,000) each year to ensure that all programs funded by the Hazardous Waste Control Account will not be adversely affected by any revenue shortfalls.

(*l*) When the department prepares the annual report required by Section 10359 of the Public Contract Code, the department shall, in addition to providing the information required by that section, include all of the following information:

(1) The source of funding for each contract.

(2) The statutory authorization, if applicable, for each contract.

SEC. 4. Section 25174.8 of the Health and Safety Code is amended to read:

25174.8. (a) All fees assessed pursuant to this chapter, and received from agencies of the federal government, shall be deposited in the Federal Receipts Account which is hereby created as a subaccount in the Hazardous Waste Control Account. Upon appropriation by the Legislature, money in the Federal Receipts Account may be expended by the department for the purposes of this chapter, but may not be expended for site remediation or the removal of hazardous substances. Notwithstanding this section, fees or other money provided to the department by federal agencies to reimburse the state for its costs of overseeing or undertaking remediation or removal on specific federally owned sites, including, but not limited to, investigation and characterization, shall not be placed in the Federal Receipts Account. In addition, any money received through grant or agreement to be placed in the Federal Trust Fund, in accordance with Article 1.5 (commencing with Section 16360) of Chapter 2 of Part 2 of Division 4 of Title 2 of the Government Code, shall not be deposited in the Federal Receipts Account.

(b) This section shall become inoperative on June 30, 1999, and, as of January 1, 2000, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2000, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 5. Section 25174.9 is added to the Health and Safety Code, to read:

25174.9. The Hazardous Waste Control Account is the successor fund of the Federal Receipts Account that was established pursuant to Section 25174.8, as that section read on January 1, 1999. All assets, liabilities, and surplus of the Federal Receipts Account shall, as of June 30, 1999, be transferred to, and become a part of the Hazardous Waste Control Account, as provided by Section 16346 of the Government Code. All existing appropriations from the Federal Receipts Account, to the extent encumbered, and also those which had been made for particular projects from the Federal Receipts Account, shall continue to be available for the same purposes and periods from the Hazardous Waste Control Account.

SEC. 6. Section 25187.5 of the Health and Safety Code is amended to read:

25187.5. (a) If corrective action is not taken on or before the date specified in an order issued pursuant to Section 25187, or if in the judgment of the department immediate corrective action is necessary to remedy or prevent an imminent substantial danger to the public health, domestic livestock, wildlife, or the environment, the department may take, or contract for the taking of, that corrective action and recover the cost thereof as provided in subdivision (c).

(b) (1) The department may expend up to one hundred thousand dollars ($100,000) in a 12-month period of available moneys in the Hazardous Waste Control Account in the General Fund to take corrective action pursuant to subdivision (a).

(2) Notwithstanding any other provision of law, the department may enter into written contracts for corrective action taken or to be taken pursuant to subdivision (a).

(3) Notwithstanding any other provision of law, the department may enter into oral contracts, not to exceed ten thousand dollars ($10,000) in obligation, when in the judgment of the department immediate corrective action is necessary to remedy or prevent an imminent substantial danger to the public health, domestic livestock, wildlife, or the environment.

(4) The contracts entered into pursuant to this subdivision, whether written or oral, may include provisions for the rental of tools or equipment, either with or without operators furnished, and for the furnishing of labor and materials necessary to accomplish the work.

(5) Any contract entered into by the department pursuant to this subdivision shall be exempt from approval by the Department of General Services pursuant to Section 10295 of the Public Contract Code.

(c) If corrective action is taken pursuant to subdivision (a), the person or persons who were subject to the order issued pursuant to Section 25187, or any person or persons whose violation resulted in the imminent and substantial danger to health or the environment

shall be liable to the department for the reasonable cost actually incurred in taking corrective action. In addition, the person or persons shall be liable to the department for administrative costs in an amount equal to 10 percent of the reasonable cost actually incurred or five hundred dollars ($500), whichever is greater. The amount of cost determined pursuant to this subdivision shall be recoverable in a civil action by the department, in addition to any other fees or penalties. Persons who may be liable pursuant to this subdivision shall include, but not be limited to, present or prior owners, lessees, or operators of the property where the hazardous waste is located and producers, transporters or disposers of the hazardous waste.

(d) Neither the department, nor any person authorized by the department to enter upon any lands for the purpose of taking corrective action pursuant to subdivision (a) is liable to civil or criminal action for trespass for any acts that are necessary to carry out the corrective action.

(e) This section does not impose any new liability associated with acts that occurred before January 1, 1981, if the acts were not in violation of existing law or regulations at the time they occurred.

SEC. 7. Section 25205.6 of the Health and Safety Code is amended to read:

25205.6. (a) On or before November 1 of each year, the department shall provide the board with a schedule of codes, that consists of the types of corporations that use, generate, store, or conduct activities in this state related to hazardous materials, as defined in subdivision (k) of Section 25501, including, but not limited to, hazardous waste. The schedule shall consist of identification codes from one of the following classification systems, as deemed suitable by the department:

(1) The Standard Industrial Classification (SIC) system established by the United States Department of Commerce.

(2) The North American Industry Classification System (NAICS) adopted by the United States Census Bureau.

(b) Each corporation of a type identified in the schedule adopted pursuant to subdivision (a) shall pay an annual fee, which shall be set at two hundred dollars ($200) for those corporations with 50 or more employees, but less than 75 employees, three hundred fifty dollars ($350) for those corporations with 75 or more employees, but less than 100 employees, seven hundred dollars ($700) for those corporations with 100 or more employees, but less than 250 employees, one thousand five hundred dollars ($1,500) for those corporations with 250 or more employees, but less than 500 employees, two thousand eight hundred dollars ($2,800) for those corporations with 500 or more employees, but less than 1,000 employees, and nine thousand five hundred dollars ($9,500) for those corporations with 1,000 or more employees.

(c) The fee imposed pursuant to this section shall be paid by each corporation that is identified in the schedule adopted pursuant to subdivision (a) in accordance with Part 22 (commencing with Section 43001) of Division 2 of the Revenue and Taxation Code and shall be deposited in the Toxic Substances Control Account. The revenues shall be available, upon appropriation by the Legislature, for the purposes specified in subdivision (b) of Section 25173.6.

(d) For purposes of this section, the number of employees employed by a corporation is the number of persons employed in this state for more than 500 hours during the calendar year preceding the calendar year in which the fee is due.

(e) The fee rates specified in subdivision (b) are the rates for the 1998 calendar year. Beginning with the 1999 calendar year, and for each calendar year thereafter, the board shall adjust the rates 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.

(f) Pursuant to paragraph (3) of subsection (c) of Section 104 of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9404(c)(3)), the state is obligated, as authorized by paragraph (2) of subdivision (a) of Section 25351, to pay specified costs of removal and remedial actions carried out pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601, et seq.). The fee rates specified in subdivision (b) are intended to provide sufficient revenues to fund the purposes of subdivision (b) of Section 25173.6, including appropriations in any given fiscal year of three million three hundred thousand dollars ($3,300,000) to fund the state's obligation pursuant to paragraph (3) of subsection (c) of Section 104 of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9404(c)(3)). If the department determines that the state's obligation under paragraph (3) of subsection (c) of Section 104 of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9404(c)(3)) will exceed three million three hundred thousand dollars ($3,300,000) in any fiscal year, the department shall report that determination to the Legislature in the Governor's Budget. If, as part of the Budget Act deliberations, the Legislature concurs with the department's determination, the Legislature shall specify in the annual Budget Act those pro rata changes to the fee rates specified in subdivision (b) that will increase revenues in the next calendar year as necessary to fund the state's increased obligations. However, the Legislature shall not specify fee rates in the annual Budget Act that increase revenues in an amount greater than eight million two hundred thousand dollars ($8,200,000) above the revenues provided by the fee rates specified in subdivision (b). Any changes in the fee rates approved by the Legislature in the

annual Budget Act pursuant to this subdivision shall have effect only on the fee payment that is due and payable by the end of February in the fiscal year for which that annual Budget Act is enacted.

(g) This section does not apply to nonprofit corporations primarily engaged in the provision of residential social and personal care for children, the aged, and special categories of persons with some limits on their ability for self-care, as described in SIC Code 8361 of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.

SEC. 8. Section 25205.7 of the Health and Safety Code, as amended by Section 22 of Chapter 870 of the Statutes of 1997, is amended to read:

25205.7. (a) (1) Except as otherwise provided in this section, any person who applies for, or requests, one of the following shall enter into a written agreement with the department pursuant to which that person shall reimburse the department, pursuant to Article 9.2 (commencing with Section 25206.1), for the costs incurred by the department in processing the application or responding to the request:

(A) A new hazardous waste facilities permit, including a standardized permit.

(B) A hazardous waste facilities permit for postclosure.

(C) A renewal of an existing hazardous waste facilities permit, including a standardized permit or postclosure permit.

(D) A class 2 or class 3 modification of an existing hazardous waste facilities permit or grant of interim status, including a standardized permit or grant of interim status or a postclosure permit.

(E) A variance.

(F) A waste classification determination.

(2) Any agreement required pursuant to paragraph (1) may provide for some, or all, of the reimbursement to be made in advance of the processing of the application or the response to the request.

(3) Any agreement entered into pursuant to this subdivision may include costs of reviewing and overseeing corrective action as set forth in subdivision (b).

(4) This subdivision does not apply to any application or request submitted to the department prior to July 1, 1998. Any person who submitted such an application or request shall pay the applicable fee, if not already paid, for the application or request as required by this chapter as it read prior to January 1, 1998, unless the department and the applicant or requester mutually agree to enter into a reimbursement agreement in lieu of any unpaid portion of the required fee.

(b) The department shall recover all the department's costs in reviewing and overseeing any corrective action program described in the application for a standardized permit pursuant to subparagraph (C) of paragraph (2) of subdivision (c) of Section 25201.6 or required pursuant to subdivision (b) of Section 25200.10,

and in reviewing and overseeing any corrective action work undertaken at the facility pursuant to that corrective action program.

(c) Any reimbursements received pursuant to this section shall be placed in the Hazardous Waste Control Account for appropriation in accordance with Section 25174.

(d) (1) In lieu of entering into a reimbursement agreement with the department pursuant to subdivision (a), any person who applies for a new permit, a permit for postclosure, a renewal of an existing permit, or a class 2 or class 3 permit modification may instead elect to pay a fee as follows:

(A) A person submitting a hazardous waste facilities permit application for a land disposal facility shall pay one hundred four thousand one hundred eighty-seven dollars ($104,187) for a small facility, two hundred twenty-two thousand one hundred eighty-three dollars ($222,183) for a medium facility, and three hundred eighty-one thousand six hundred two dollars ($381,602) for a large facility.

(B) A person submitting a hazardous waste facilities permit application for any incinerator shall pay sixty-two thousand seven hundred sixty-two dollars ($62,762) for a small facility, one hundred thirty-three thousand sixty dollars ($133,060) for a medium facility, and two hundred twenty-eight thousand four hundred fifty-eight dollars ($228,458) for a large facility.

(C) Except as provided in subparagraph (D), a person submitting a hazardous waste facility permit application for a storage facility, a treatment facility, or a storage and treatment facility shall pay twenty-one thousand three hundred forty dollars ($21,340) for a small facility, thirty-eight thousand nine hundred thirteen dollars ($38,913) for a medium facility, and seventy-five thousand three hundred seventeen dollars ($75,317) for a large facility.

(D) A person submitting an application for a standardized permit for a storage facility, a treatment facility, or a storage and treatment facility, as specified in Section 25201.6, shall pay thirty-two thousand fifty-two dollars ($32,052) for a Series A standardized permit, twenty thousand eleven dollars ($20,011) for a Series B standardized permit, and five thousand three hundred thirty-two dollars ($5,332) for a Series C standardized permit. The board shall assess the fees specified in this subparagraph, in accordance with paragraph (2), based upon the classifications specified in subdivision (a) of Section 25201.6.

(E) (i) A person submitting a hazardous waste facilities permit application for a transportable treatment unit shall pay sixteen thousand three hundred twenty dollars ($16,320) for a small unit, thirty-seven thousand six hundred fifty-seven dollars ($37,657) for a medium unit, and seventy-five thousand three hundred seventeen dollars ($75,317) for a large unit.

(ii) Notwithstanding clause (i), the fee for any application for a new permit, permit modification, or permit renewal for a transportable treatment unit, that was pending before the

department as of January 1, 1996, shall be determined according to the type of permit authorizing operation of that unit, as provided by subdivision (d) of Section 25200.2 or the regulations adopted pursuant to subdivision (a) of Section 25200.2. Any standardized permit issued to the operator of a transportable treatment unit after January 1, 1996, that succeeds a full hazardous waste facilities permit issued by the department prior to January 1, 1996, in accordance with subdivision (d) of Section 25200.2 or the regulations adopted pursuant to subdivision (a) of Section 25200.2, shall not be considered to be a new hazardous waste facilities permit.

(F) A person submitting a hazardous waste facilities permit application for a postclosure permit shall pay a fee of ten thousand forty dollars ($10,040) for a small facility, twenty-two thousand five hundred ninety-six dollars ($22,596) for a medium facility, and thirty-seven thousand six hundred fifty-seven dollars ($37,657) for a large facility.

(G) A person submitting an application for one or more class 2 permit modifications, including a class 2 modification to a standardized permit, shall pay a fee equal to 20 percent of the fee for a new permit for that facility for each unit directly impacted by the modifications, up to a maximum of 40 percent for each application, except that each person who applies for one or more class 2 permit modifications for a land disposal facility or an incinerator shall pay a fee equal to 15 percent of the fee for a new permit for that facility for each unit directly impacted by the modifications, up to a maximum of 30 percent for each application.

(H) A person submitting an application for one or more class 3 permit modifications, including a class 3 modification to a standardized permit, shall pay a fee equal to 40 percent of the fee for a new permit for that facility for each unit directly impacted by the modifications, up to a maximum of 80 percent for each application, except that a person who applies for one or more class 3 permit modifications for a land disposal facility or an incinerator shall pay a fee equal to 30 percent of the fee for a new permit for that facility for each unit directly impacted by the modifications, up to a maximum of 60 percent for each application.

(I) A person who submits an application for renewal of any existing permit shall pay an amount equal to the fee that would have been assessed had the person requested the same changes in a modification application, but not less than one-half the fee required for a new permit.

(J) A person who submits a single application for a facility that falls within more than one fee category shall pay only the higher fee.

(2) The fees required by paragraph (1) shall be assessed by the board upon application to the department. For a facility operating pursuant to a grant of interim status, the submittal of the application shall be the submittal of the Part B application in accordance with regulations adopted by the department. The fee shall be

nonrefundable, even if the application is withdrawn or denied. The department shall provide the board with any information that is necessary to assess fees pursuant to this section. The fee shall be collected in accordance with Part 22 (commencing with Section 43001) of Division 2 of the Revenue and Taxation Code, and deposited into the Hazardous Waste Control Account.

(3) The amounts stated in this subdivision are the base rates for the 1997 calendar year. Thereafter, the fees shall be adjusted annually by the board to reflect increases or decreases in the cost of living, during the prior fiscal year, as measured by the Consumer Price Index issued by the Department of Industrial Relations, or a successor agency.

(4) Except as provided in paragraph (5), for purposes of this section, and notwithstanding Section 25205.1, any facility or unit is "small" if it manages 0.5 tons (1,000 pounds) or less of hazardous waste during any one month of the state's current fiscal year, "medium" if it manages more than 0.5 tons (1,000 pounds), but less than 1,000 tons, of hazardous waste during any one month of the state's current fiscal year, and "large" if it manages 1,000 or more tons of hazardous waste during any one month of the state's current fiscal year.

(5) For purposes of subparagraph (F) of paragraph (1) of this subdivision and paragraph (8) of subdivision (c) of Section 25205.4, any facility or unit is "small" if 0.5 tons (1,000 pounds) or less of hazardous waste remain after closure, "medium" if more than 0.5 tons (1,000 pounds), but less than 1,000 tons of hazardous waste remain after closure, and "large" if 1,000 or more tons of hazardous waste remain after closure.

(6) The amounts stated in this subdivision are in addition to any amounts required to reimburse the department for the corrective action review and oversight costs required to be recovered pursuant to subdivision (b).

(e) Subdivision (a) does not apply to any variance granted pursuant to Article 4 (commencing with Section 66263.40) of Chapter 13 of Division 4.5 of Title 22 of the California Code of Regulations.

(f) Subdivisions (a) and (d) do not apply to a permit modification resulting from a revision of a facility's or operator's closure plan if the facility is exempted from fees pursuant to subdivision (e) of Section 25205.3, or if the operator is subject to paragraph (2) or (3) of subdivision (d) of Section 25205.2.

(g) (1) Except as provided in paragraphs (3) and (4), subdivisions (a) and (d) do not apply to any permit or variance to operate a research, development, and demonstration facility, if the duration of the permit or variance is not longer than one year, unless the permit or variance is renewed pursuant to the regulations adopted by the department.

(2) For purposes of this section, a "research, development, and demonstration facility" is a facility which proposes to utilize an

innovative and experimental hazardous waste treatment technology or process for which regulations prescribing permit standards have not been adopted.

(3) The exemption provided by this subdivision does not apply to a facility which operates as a medium or large multiuser offsite commercial hazardous waste facility and which does not otherwise possess a hazardous waste facilities permit pursuant to Section 25200.

(4) The fee exemption authorized pursuant to paragraph (1) shall be effective for a total duration of not more than two years.

(h) Subdivisions (a) and (d) do not apply to any of the following:

(1) Any variance issued to a public agency to transport wastes for purposes of operating a household hazardous waste collection facility, or to transport waste from a household hazardous waste collection facility, which receives household hazardous waste or hazardous waste from conditionally exempted small quantity generators pursuant to Article 10.8 (commencing with Section 25218).

(2) A permanent household hazardous waste collection facility.

(3) Any variance issued to a public agency to conduct a collection program for agricultural wastes.

(i) Notwithstanding subdivisions (a) and (b), the department shall not assess any fees or seek any reimbursement for the department's costs in reviewing and overseeing any preliminary site assessment in conjunction with a hazardous waste facilities permit application.

(j) The changes made in this section by Chapter 870 of the Statutes of 1997 do not require amendment of, or otherwise affect, any agreement entered into prior to July 1, 1998, pursuant to which any person has agreed to reimburse the department for the costs incurred by the department in processing applications, responding to requests, or otherwise providing other services pursuant to this chapter.

SEC. 9. Section 25205.15 of the Health and Safety Code is amended to read:

25205.15. (a) Except for the first four manifests used in a calendar year by a business with less than 100 employees, and except as provided in subdivision (b), the department shall impose a fee of twelve dollars ($12) for each California Uniform Hazardous Waste Manifest form used on or before June 30, 1998, by any person in the following manner:

(1) The Governor may order the department to refund three-quarters of the amount of manifest fees paid on manifests used during the 1991 calendar year.

(2) (A) On and after the 1992 calendar year, for all manifests used on or before June 30, 1998, the manifest fee shall be assessed on all manifests used in the calendar year ending prior to the start of the fiscal year in which the billing occurs.

(B) Notwithstanding subparagraph (A), the department may bill a person for a manifest used from January 1, 1998, to June 30, 1998,

inclusive, during the period beginning January 1, 1999, and ending June 30, 1999, inclusive.

(b) The manifest fee for any manifest that is used on or before June 30, 1998, solely for wastes that are to be recycled is six dollars ($6) and the total amount of manifest fees paid in a calendar year for these manifests shall not exceed five thousand dollars ($5,000) for each hazardous waste identification number issued either by the department or the Environmental Protection Agency.

(c) Except as provided in paragraph (3), after June 30, 1998, in addition to any fees to cover printing and distribution costs, the department shall impose a manifest fee of seven dollars and fifty cents ($7.50) for each California Hazardous Waste Manifest form or electronic equivalent used after June 30, 1998, by any person, in the following manner:

(1) Except as provided in paragraph (2), on and after July 1, 1998, the department shall bill generators for each California Uniform Hazardous Waste Manifest form, manifest number, or electronic equivalent used after June 30, 1998. The billing frequency specified by the department may range from monthly to annually, with the payment by the generator required within 30 days from the date of receipt of the billing, and shall be determined based on consultation with the regulated community. In preparing the bills, the department shall distinguish between manifests used solely for recycled hazardous wastes and those used for nonrecycled hazardous wastes. In determining the billing frequency, the department may take into account each person's volume of manifest usage.

(2) On or before July 1, 2000, the department shall determine if revenues from the manifest fee as collected pursuant to paragraph (1) will equal or exceed one million seven hundred thousand dollars ($1,700,000) for the 1999–2000 fiscal year. If the department determines that the manifest fee revenues will not equal or exceed one million seven hundred thousand dollars ($1,700,000) for the 1999–2000 fiscal year, the department shall do the following:

(A) Commencing July 1, 2000, implement a system to collect the manifest fee at the time of original sale of the manifest or distribution of manifest numbers or electronic equivalent to users by the department for all manifests that will be used after June 30, 2000.

(B) On or before July 1, 2000, implement a system for the use of manifests that distinguishes between manifests used solely for transporting hazardous wastes that are recycled and manifests used for transporting waste for any other purpose.

(3) (A) The manifest fee shall not be collected on the use of California Hazardous Waste Recycling Manifests that are used after June 30, 1998, solely for hazardous wastes that are recycled.

(B) If a person uses a manifest that reports that it is being used for hazardous wastes that are recycled for other types of hazardous waste, the person shall pay the manifest fee provided for in this subdivision and an additional error correction fee of twenty dollars

($20) per manifest, as required pursuant to Section 25160.5. However, the department shall provide the manifest user with a reasonable opportunity to notify the department of any incorrect use of the manifest and provide the department with the appropriate manifest fee payment without additional fines, penalties, or payment of the error correction fee.

(4) The department may adopt regulations to implement and administer the manifest fee system imposed pursuant to this subdivision.

(d) The department shall expend the sum of one million dollars ($1,000,000) from the manifest fees deposited in the Hazardous Waste Control Account, upon appropriation by the Legislature in the annual Budget Act, to cover this one-time cost of implementing changes to the hazardous waste manifest tracking system during the 1998–99 fiscal year.

(e) The manifest fees shall be deposited in the Hazardous Waste Control Account and be available for expenditure, upon appropriation by the Legislature.

SEC. 9.5. Section 25205.15 of the Health and Safety Code is amended to read:

25205.15. (a) Except for the first four manifests used in a calendar year by a business with less than 100 employees, and except as provided in subdivision (b), the department shall impose a fee of twelve dollars ($12) for each California Uniform Hazardous Waste Manifest form used on or before June 30, 1998, by any person in the following manner:

(1) The Governor may order the department to refund three-quarters of the amount of manifest fees paid on manifests used during the 1991 calendar year.

(2) (A) On and after the 1992 calendar year, for all manifests used on or before June 30, 1998, the manifest fee shall be assessed on all manifests used in the calendar year ending prior to the start of the fiscal year in which the billing occurs.

(B) Notwithstanding subparagraph (A), the department may bill a person for a manifest used from January 1, 1998, to June 30, 1998, inclusive, during the period beginning January 1, 1999, and ending June 30, 1999, inclusive.

(b) The manifest fee for any manifest that is used on or before June 30, 1998, solely for wastes that are to be recycled is six dollars ($6) and the total amount of manifest fees paid in a calendar year for these manifests shall not exceed five thousand dollars ($5,000) for each hazardous waste identification number issued either by the department or the Environmental Protection Agency.

(c) Except as provided in paragraph (3), after June 30, 1998, in addition to any fees to cover printing and distribution costs, the department shall impose a manifest fee of seven dollars and fifty cents ($7.50) for each California Hazardous Waste Manifest form or

electronic equivalent used after June 30, 1998, by any person, in the following manner:

(1) Except as provided in paragraph (2), on and after July 1, 1998, the department shall bill generators for each California Uniform Hazardous Waste Manifest form, manifest number, or electronic equivalent used after June 30, 1998. The billing frequency specified by the department may range from monthly to annually, with the payment by the generator required within 30 days from the date of receipt of the billing, and shall be determined based on consultation with the regulated community. In preparing the bills, the department shall distinguish between manifests used solely for recycled hazardous wastes and those used for nonrecycled hazardous wastes. In determining the billing frequency, the department may take into account each person's volume of manifest usage.

(2) On or before July 1, 2000, the department shall determine if revenues from the manifest fee as collected pursuant to paragraph (1) will equal or exceed one million seven hundred thousand dollars ($1,700,000) for the 1999–2000 fiscal year. If the department determines that the manifest fee revenues will not equal or exceed one million seven hundred thousand dollars ($1,700,000) for the 1999–2000 fiscal year, the department shall instead, commencing July 1, 2000, implement a system to collect the manifest fee at the time of original sale of the manifest or distribution of manifest numbers or electronic equivalent to users by the department for all manifests that will be used after June 30, 2000. In developing this system, the department shall consult with the regulated community and shall take into consideration the potential economic effects that a system of collecting manifest fees at the point of original sale may have on generators and transporters.

(3) (A) The manifest fee shall not be collected on the use of California Hazardous Waste Recycling Manifests that are used solely for hazardous wastes that are recycled.

(B) On and after January 1, 1999, the manifest fee for each California Uniform Hazardous Waste Manifest form used after December 31, 1998, solely for hazardous waste derived from air compliance solvents, shall be three dollars and fifty cents ($3.50) This is in addition to any fees charged to cover printing and distribution costs.

(4) The department shall implement a system for the use of manifests that, after January 1, 1999, distinguishes among recycling manifests used solely for hazardous wastes that are to be recycled, manifests used solely to transport hazardous waste derived from air compliance solvents, and general manifests that may be used for transporting waste for any purpose.

(5) (A) If a person erroneously reports on a California Uniform Hazardous Waste Manifest that the manifest is being used for the transport of hazardous wastes that are being shipped for recycling or for the transport of hazardous wastes derived from air compliance

solvents rather than the transport of other types of hazardous waste, the person shall pay the seven dollars and fifty cents ($7.50) manifest fee and an additional error correction fee of twenty dollars ($20) per manifest, as required pursuant to Section 25160.5.

(B) Notwithstanding subparagraph (A) the department shall provide the manifest user with a reasonable opportunity to notify the department of any incorrect use of the recycling manifest, as described in subparagraph (A), and to provide the department with the appropriate manifest fee payment without additional fines, penalties, or payment of the error correction fee.

(6) The department may adopt regulations to implement and administer the manifest fee system imposed pursuant to this subdivision.

(d) (1) The department shall expend the sum of one million dollars ($1,000,000) from the manifest fees deposited in the Hazardous Waste Control Account, upon appropriation by the Legislature in the annual Budget Act, to cover the one-time cost of implementing changes to the hazardous waste manifest tracking system during the 1998–99 fiscal year.

(2) On and after July 1, 1999, commencing with 1999–2000 fiscal year and annually thereafter, the department shall expend, upon appropriation by the Legislature in the annual Budget Act, not less than one million fifty thousand dollars ($1,050,000) from the manifest fees, deposited in the Hazardous Waste Control Account, to establish a program to encourage hazardous waste generators to implement pollution prevention measures. The program shall be administered pursuant to administrative and expenditure criteria to be established by the Legislature.

(e) The manifest fees shall be deposited in the Hazardous Waste Control Account and be available for expenditure, upon appropriation by the Legislature.

(f) For purposes of this section, "air compliance solvent" means a solvent, including aqueous solutions, that are required or approved for use by regulations adopted by the State Air Resources Board, an air pollution control district, or an air quality management district, to meet air emission standards adopted by that board or district and, pursuant to those regulations, is required to be used instead of another solvent that was used and recycled prior to the adoption of those regulations.

SEC. 10. Section 25354 of the Health and Safety Code is amended to read:

25354. (a) There is hereby continuously appropriated from the state account to the department the sum of one million dollars ($1,000,000) for each fiscal year as a reserve account for emergencies, notwithstanding Section 13340 of the Government Code. The department shall expend moneys available in the reserve account only for the purpose of taking immediate corrective action necessary to remedy or prevent an emergency resulting from a fire or an

explosion of, or human exposure to, hazardous substances caused by the release or threatened release of a hazardous substance.

(b) (1) Notwithstanding any other provision of law, the department may enter into written contracts for corrective action taken or to be taken pursuant to subdivision (a).

(2) Notwithstanding any other provision of law, the department may enter into oral contracts, not to exceed ten thousand dollars ($10,000) in obligation, when, in the judgment of the department, immediate corrective action is necessary to remedy or prevent an emergency specified in subdivision (a).

(3) The contracts made pursuant to this subdivision, whether written or oral, may include provisions for the rental of tools or equipment, either with or without operators furnished, and for the furnishing of labor and materials necessary to accomplish the work.

(4) If the department finds that the corrective action includes the relocation of individuals, the department may contract with those individuals for out-of-pocket expenses incurred in moving for an amount of not more than one thousand dollars ($1,000).

(c) The department shall include in the biennial report specified in Section 25178 an accounting of the moneys expended pursuant to this section. Once the appropriation made pursuant to subdivision (a) is fully expended, the director may file a report with the Legislature if it is in session or, if it is not in session, with the Committee on Rules of the Assembly and the Senate as to the moneys expended pursuant to this section. The Legislature may appropriate moneys from the state account, in addition to those moneys appropriated pursuant to subdivision (a), to the department for the purpose of taking corrective action pursuant to subdivision (a).

(d) Except as provided in subdivision (c), the amount deposited in the reserve account and appropriated pursuant to this section shall not exceed one million dollars ($1,000,000) in any fiscal year. On June 30 of each year, the unencumbered balance of the reserve account shall revert to and be deposited in the state account.

SEC. 11. Section 25354.5 of the Health and Safety Code, as amended by Section 45 of Chapter 870 of the Statutes of 1997, is amended to read:

25354.5. (a) Any state or local law enforcement officer or investigator or other law enforcement agency employee who, in the course of an official investigation or enforcement action regarding the manufacture of any illegal controlled substance, comes in contact with, or is aware of, the presence of a substance that the person suspects is a hazardous substance at a site where an illegal controlled substance is or was manufactured, shall notify the department for the purpose of taking removal action, as necessary, to prevent, minimize, or mitigate damage that might otherwise result from the release or threatened release of the hazardous substance, except for samples required to be kept for evidentiary purposes.

(b) (1) Notwithstanding any other provision of law, upon receipt of a notification pursuant to subdivision (a), the department shall take removal action, as necessary, with respect to any hazardous substance that is an illegal controlled substance, a precursor of a controlled substance, a material intended to be used in the unlawful manufacture of a controlled substance, or a waste material from the unlawful manufacture of a controlled substance. The department may expend funds appropriated from the Illegal Drug Lab Cleanup Account created pursuant to subdivision (e) to pay the costs of removal actions required by this section. The department may enter into oral contracts, not to exceed ten thousand dollars ($10,000) in obligation, when, in the judgment of the department, immediate corrective action to a hazardous substance subject to this section is necessary to remedy or prevent an emergency.

(2) The department shall, as soon as the information is available, report the location of any removal action that will be carried out pursuant to paragraph (1), and the time that the removal action will be carried out, to the local environmental health officer within whose jurisdiction the removal action will take place, if the local environmental officer does both of the following:

(A) Requests, in writing, that the department report this information to the local environmental health officer.

(B) Provides the department with a single 24-hour telephone number to which the information can be reported.

(c) (1) For purposes of Chapter 6.5 (commencing with Section 25100) or this chapter, any person who is found to have operated a site for the purpose of manufacturing an illegal controlled substance or a precursor of an illegal controlled substance is the generator of any hazardous substance at, or released from, the site that is subject to removal action pursuant to this section.

(2) During the removal action, for purposes of complying with the manifest requirements in Section 25160, the department, the county health department, the local environmental health officer, or their designee may sign the hazardous waste manifest as the generator of the hazardous waste. In carrying out that action, the department, the county health department, the local environmental health officer, or their designee shall be considered to have acted in furtherance of their statutory responsibilities to protect the public health and safety and the environment from the release, or threatened release, of hazardous substances, and the department, the county health department, the local environmental health officer, or their designee are not responsible parties for the release or threatened release of the hazardous substances.

(3) The officer, investigator, or agency employee specified in subdivision (a) is not a responsible party for the release or threatened release of any hazardous substances at, or released from, the site.

(d) The department may adopt regulations to implement this section in consultation with appropriate law enforcement and local environmental agencies.

(e) The Illegal Drug Lab Cleanup Account is hereby created in the General Fund and the department may expend any money in the account, upon appropriation by the Legislature, to carry out the removal actions required by this section. The account shall be funded by moneys appropriated directly from the General Fund.

(f) The responsibilities assigned to the department by the act adding this subdivision apply only to the extent that sufficient funding is made available for that purpose.

SEC. 12. Section 43055 is added to the Revenue and Taxation Code, to read:

43055. The surcharge imposed pursuant to Section 25205.9 of the Health and Safety Code, as that section read on December 31, 1997, and was repealed by Section 24 of Chapter 870 of the Statutes of 1997, shall be administered and collected by the board in accordance with this part, with regards to any amounts due and payable on or before February 28, 1998.

SEC. 13. Section 43551 of the Revenue and Taxation Code is amended to read:

43551. All taxes, interest, and penalties imposed and all amounts of tax required to be paid to the state pursuant to Sections 43051, 43053, and 43055, shall be paid to the board in the form of remittances payable to the State Board of Equalization of the State of California. The board shall transmit the payments to the Treasurer to be deposited in the State Treasury to the credit of the Hazardous Waste Control Account.

SEC. 14. Section 43552 is added to the Revenue and Taxation Code, to read:

43552. All taxes, interest, and penalties imposed and all amounts of tax required to be paid to the state pursuant to Section 43054 shall be paid to the board in the form of remittances payable to the State Board of Equalization of the State of California. The board shall transmit the payments to the Treasurer for deposit in the State Treasury to the credit of the Toxic Substances Control Account.

SEC. 15. Section 53 of Chapter 870 of the Statutes of 1997 is amended to read:

Sec. 53. (a) The Legislature hereby finds and declares all of the following:

(1) Section 25385.8 of the Health and Safety Code requires that five million dollars ($5,000,000) be transferred annually from the Hazardous Substance Account to the Superfund Bond Trust Fund to be held in reserve and provides that money deposited in the Hazardous Substance Clearing Account may be used only to pay the principal of, and interest on, the bonds issued and sold pursuant to Article 7.5 (commencing with Section 25385) of Chapter 6.8 of Division 20 of the Health and Safety Code.

(2) Notwithstanding Section 25358.8 of the Health and Safety Code, Item 4260-016-826 of the Budget Act of 1991 (Chapter 118 of the Statutes of 1991) directed the Controller, upon approval of the Department of Finance, to transfer not less than twenty million dollars ($20,000,000) from the Superfund Bond Trust Fund to the General Fund to balance the budget for the 1991–92 fiscal year. In accordance with the Budget Act of 1991, the Controller transferred twenty million dollars ($20,000,000) from the Superfund Bond Trust Fund to the General Fund on June 2, 1992.

(3) The transfer of funds described in paragraph (2) will cause a shortfall in funds needed to repay the principal of, and interest on, the bonds issued and sold pursuant to Article 7.5 (commencing with Section 25385) of Chapter 6.8 of Division 20 of the Health and Safety Code beginning with the 1998–99 fiscal year. Because of the impending shortfall, the Legislature finds that the General Fund should reimburse the Superfund Bond Trust Fund for the money transferred pursuant to Item 4260-016-826 of the Budget Act of 1991, plus interest at the applicable State Surplus Money Investment Fund interest rate, for all periods during which the General Fund had use of the funds and until the Superfund Bond Trust Fund is fully reimbursed.

(b) The following amounts shall be transferred from the General Fund to the Superfund Bond Trust Fund to pay the principal of, and interest on, the bonds issued and sold pursuant to Article 7.5 (commencing with Section 25385) of Chapter 6.8 of Division 20 of the Health and Safety Code, in accordance with the following schedule:

(1) Three million three hundred thousand dollars ($3,300,000) shall be transferred from the General Fund to the Superfund Bond Trust Fund on or before August 1, 1999.

(2) Three million one hundred thousand dollars ($3,100,000) shall be transferred from the General Fund to the Superfund Bond Trust Fund on or before August 1, 2000.

(3) The amount needed to repay the remainder of the funds transferred pursuant to Item 4260-016-826 of the Budget Act of 1991, plus all interest accrued since the date that the transfer took place, shall be transferred from the General Fund to the Superfund Bond Trust Fund on or before August 1, 2001.

SEC. 16. Section 2.5 of this bill incorporates amendments to Section 25173.7 of the Health and Safety Code proposed by both this bill and SB 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 25173.7 of the Health and Safety Code, and (3) this bill is enacted after SB 1916, in which case Section 2 of this bill shall not become operative.

SEC. 17. Section 9.5 of this bill incorporates amendments to Section 25205.15 of the Health and Safety Code proposed by both this bill and AB 2067. It shall only become operative if (1) both bill are enacted and become effective on or before January 1, 1999, (2) each

bill amends Section 25205.15 of the Health and Safety Code, and (3) this bill is enacted after AB 2067, in which case Section 9 of this bill shall not become operative.

SEC. 18. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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

CHAPTER 883

An act to amend Sections 124900, 124905, 124910, and 124920 of, to add Sections 124906 and 124911 to, and to repeal Section 124935 of, the Health and Safety Code, relating to health care.

[Approved by Governor September 26, 1998. Filed with Secretary of State September 28, 1998.]

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

SECTION 1. Section 124900 of the Health and Safety Code is amended to read:

124900. (a) (1) The State Department of Health Services shall select primary care clinics that are licensed under paragraph (1) or (2) of subdivision (a) of Section 1204, or are exempt from licensure under subdivision (c) of Section 1206, to be reimbursed for delivering medical services, including preventative health care, and smoking prevention and cessation health education, to program beneficiaries.

(2) Except as provided for in paragraph (3), in order to be eligible to receive funds under this article a clinic shall meet all of the following conditions, at a minimum:

(A) Provide medical diagnosis and treatment.

(B) Provide medical support services of patients in all stages of illness.

(C) Provide communication of information about diagnosis, treatment, prevention, and prognosis.

(D) Provide maintenance of patients with chronic illness.

(E) Provide prevention of disability and disease through detection, education, persuasion, and preventive treatment.

(F) Meet one or both of the following conditions:

(i) Are located in an area federally designated as a medically underserved area or medically underserved population.

(ii) Are clinics that are able to demonstrate that at least 50 percent of the patients served are persons with incomes at or below 200 percent of the federal poverty level.

(3) Notwithstanding the requirements of paragraph (2), all clinics that received funds under this article in the 1997–98 fiscal year shall continue to be eligible to receive funds under this article.

(b) As a part of the award process for funding pursuant to this article, the department shall take into account the availability of primary care services in the various geographic areas of the state. The department shall determine which areas within the state have populations which have clear and compelling difficulty in obtaining access to primary care. The department shall consider proposals from new and existing eligible providers to extend clinic services to these populations.

(c) Each primary care clinic applying for funds pursuant to this article shall demonstrate that the funds shall be used to expand medical services, including preventative health care, and smoking prevention and cessation health education, for program beneficiaries above the level of services provided in the 1988 calendar year or in the year prior to the first year a clinic receives funds under this article if the clinic did not receive funds in the 1989 calendar year.

(d) (1) The department, in consultation with clinics funded under this article, shall develop a formula for allocation of funds available.

(2) The formula shall be based on both of the following:

(A) A hold harmless for clinics funded in the 1997–98 fiscal year to continue to reimburse them for some portion of their uncompensated care.

(B) Demonstrated unmet need by both new and existing clinics, as reflected in their levels of uncompensated care reported to the department. For purposes of this article, "uncompensated care" means clinic patient visits for persons with incomes at or below 200 percent of the federal poverty level for which there is no encounter-based third-party reimbursement which includes, but is not limited to, unpaid expanded access to primary care claims and other unreimbursed visits as verified by the department according to subparagraph (A) of paragraph (5).

(3) In the 1998–99 fiscal year, the department shall allocate funds for a three-year period as follows:

(A) If the funds available for the purposes of this article are equal to or less than the prior fiscal year, clinics that received funding in the prior fiscal year shall receive 90 percent of their prior fiscal year allocation, subject to available funds, provided that funding award is substantiated by the clinics' reported levels of uncompensated care. The remaining funds beyond 90 percent shall be awarded in the following order:

(i) First priority shall be given to clinics that participated in the program in prior fiscal years, withdrew from the program due to financial considerations, were subsequently categorized as "new applicants" when they reapplied to the program, and received a significantly reduced allocation as a result. These clinics shall be awarded 90 percent of their allocation prior to their withdrawal from the program, subject to available funds, provided that award level is substantiated by the clinic's reported levels of uncompensated care.

(ii) Second priority shall be given to those clinics that received program funds in the prior year and continue to meet the minimum requirements for funding under this article. In implementing this priority, the department shall allocate funds to all eligible previously funded clinics on a proportionate basis, based on their reported levels of uncompensated care, which may include, but is not limited to, unpaid expanded access to primary care claims and other unreimbursed patient visits, as verified by the department according to subparagraph (A) of paragraph (5).

(B) If funds available for the purposes of this article are equal to or less than the prior fiscal year, only those clinics that received program funds in the prior fiscal year may be awarded funds. Funds shall be awarded in the same priority order as specified in clauses (i) and (ii) of subparagraph (A).

(C) If funds available for purposes of this article are greater than the prior fiscal year, clinics that received funds in the prior fiscal year shall be awarded 100 percent of their prior fiscal year allocation, provided that funding award level is substantiated by the clinic's reported levels of uncompensated care. Remaining funds shall be awarded in the following priority order:

(i) First priority shall be given to clinics that participated in the program in prior fiscal years, withdrew from the program due to financial considerations, were subsequently categorized as "new applicants" when they reapplied to the program, and received a significantly reduced allocation as a result. These clinics shall be awarded 100 percent of their allocation prior to their withdrawal from the program, provided that award level is substantiated by the clinic's reported levels of uncompensated care.

(ii) Second priority shall be given to new and existing applicants that meet the minimum requirements for funding under this article. In implementing this priority, the department shall allocate funds to all eligible previously funded clinics on a proportionate basis, based on their reported levels of uncompensated care, which may include, but is not limited to, unpaid expanded access to primary care claims and other unreimbursed patient visits, as verified by the department, according to subparagraph (A) of paragraph (5).

(4) In the 2001–02 fiscal year, and subsequent fiscal years thereafter, the department shall allocate available funds, for a three-year period, based on the clinics' reported levels of

uncompensated care as verified by the department according to subparagraph (B) of paragraph (5).

(5) In assessing reported levels of uncompensated care, the department shall utilize the most recent data available from the Office of Statewide Health Planning and Development's (OSHPD) completed analysis of the "Annual Report of Primary Care Clinics."

(A) In the 1998–99 to 2000–01 fiscal years, inclusive, clinics shall submit updated data regarding the clinic's levels of uncompensated care to the department with their initial application, and for each of the two remaining years in the three-year application period. The department shall compare the clinic's updated uncompensated care data to the OSHPD uncompensated care data for that clinic for the same reporting period. Discrepancies in uncompensated care data for any particular clinic shall be resolved to the satisfaction of the department prior to the award of funds to that clinic.

(B) In the 2001–02 fiscal year, and subsequent fiscal years thereafter, clinics may not submit updated data regarding the clinic's levels of uncompensated care. The department shall utilize the most recent data available from OSHPD's completed analysis of the "Annual Report of Primary Care Clinics."

(C) If the funds allocated to the program are less than the prior year, the department shall allocate available funds to existing program providers only.

(6) The department shall establish a base funding level, subject to available funds, of no less than thirty-five thousand dollars ($35,000) for frontier clinics and Native American reservation-based clinics. For purposes of this article, "frontier clinics" means clinics located in a medical services study area with a population of fewer than 11 persons per square mile.

(7) The department shall develop, in consultation with clinics funded pursuant to this article, a formula for reallocation of unused funds to other participating clinics to reimburse for uncompensated care. The department shall allocate the unused funds to other participating clinics to reimburse for uncompensated care.

(e) In applying for funds, eligible clinics shall submit a single application per clinic corporation. Applicants with multiple sites shall apply for all eligible clinics, and shall report to the department the allocation of funds among their corporate sites in the prior year. A corporation may only claim reimbursement for services provided at a program-eligible clinic site identified in the corporate entity's application for funds, and approved for funding by the department. A corporation may increase or decrease the number of its program-eligible clinic sites on an annual basis, at the time of the annual application update for the subsequent fiscal years of any multiple-year application period.

(f) Grant allocations pursuant to this article shall be based on the formula developed by the department, notwithstanding a merger of

one of more licensed primary care clinics participating in the program.

(g) A clinic that is eligible for the program in every other respect, but that provides dental services only, rather than the full range of primary care medical services, shall only be eligible to receive funds under this article on an exception basis. A dental-only provider's application shall include a Memorandum of Understanding (MOU) with a primary care clinic funded under this article. The MOU shall include medical protocols for making referrals by the primary care clinic to the dental clinic and from the dental clinic to the primary care clinic, and ensure that case management services are provided and that the patient is being provided comprehensive primary care as defined in subdivision (a).

(h) (1) For purposes of this article, an outpatient visit shall include diagnosis and medical treatment services, including the associated pharmacy, X-ray, and laboratory services, and prevention health and case management services that are needed as a result of the outpatient visit. For a new patient, an outpatient visit shall also include a health assessment encompassing an assessment of smoking behavior and the patient's need for appropriate health education specific to related tobacco use and exposure.

(2) "Case management" includes, for this purpose, the management of all physician services, both primary and specialty, and arrangements for hospitalization, postdischarge care, and followup care.

(i) (1) Payment shall be on a per visit basis at a rate that is determined by the department to be appropriate for an outpatient visit as defined in this section, and shall be not less than sixty-five dollars ($65).

(2) In developing a statewide uniform rate for an outpatient visit as defined in this article, the department shall consider existing rates of payments for comparable outpatient visits. The department shall review the outpatient visit rate on an annual basis.

(j) Not later than May 1 of each year, the department shall adopt and provide each licensed primary care clinic with a schedule for programs under this article, including the date for notification of availability of funds, the deadline for the submission of a completed application, and an anticipated contract award date for successful applicants.

(k) In administering the program created pursuant to this article, the department shall utilize the Medi-Cal program statutes and regulations pertaining to program participation standards, medical and administrative recordkeeping, the ability of the department to monitor and audit clinic records pertaining to program services rendered to program beneficiaries and take recoupments or recovery actions consistent with monitoring and audit findings, and the provider's appeal rights. Each primary care clinic applying for program participation shall certify that it will abide by these statutes

and regulations and other program requirements set forth in this article.

SEC. 2. Section 124905 of the Health and Safety Code is amended to read:

124905. For purposes of this article, a "program beneficiary" is any person whose income level is at or below 200 percent of the federal poverty level as adjusted annually. Program beneficiaries shall not be required to provide any copayment for services that are funded pursuant to this article, except that clinics may charge beneficiaries on a sliding fee scale for services, but no beneficiary shall be denied services because of an inability to pay. The department shall annually adjust this income standard to reflect any changes in the federal poverty level. Payment pursuant to this article shall be made only for services for which payment will not be made through any private or public third-party reimbursement.

SEC. 3. Section 124906 is added to the Health and Safety Code, to read:

124906. A program applicant's uncompensated care shall be determined by, and based on, the number of visits for patients whose income level is at or below 200 percent of the federal poverty level, and whose health care costs are not reimbursed by any encounter-based third-party payer, which includes, but is not limited to, unpaid expanded access to primary care claims or other unreimbursed visits, as verified by the department according to subparagraph (A) of paragraph (5) of subdivision (d) of Section 124900.

SEC. 4. Section 124910 of the Health and Safety Code is amended to read:

124910. (a) (1) Except as provided in paragraph (3) of subdivision (a) of Section 124900, each licensed primary care clinic, as specified in subdivision (a) of Section 124900, applying for funds under this article, shall demonstrate in its application that it meets all of the following conditions, at a minimum:

(A) Provides medical diagnosis and treatment.

(B) Provides medical support services of patients in all stages of illness.

(C) Provides communication of information about diagnosis, treatment, prevention, and prognosis.

(D) Provides maintenance of patients with chronic illness.

(E) Provides prevention of disability and disease through detection, education, persuasion, and preventive treatment.

(F) Meets one or both of the following conditions:

(i) Is located in an area federally designated as a medically underserved area or medically underserved population.

(ii) Is a clinic in which at least 50 percent of the patients served are persons with incomes at or below 200 percent of the federal poverty level.

(2) Any applicant who has applied for and received a federal or state designation for serving a medically underserved area or population shall be deemed to meet the requirements of subdivision (a) of Section 124900.

(b) Each applicant shall also demonstrate to the satisfaction of the department that the proposed services supplement, and do not supplant, those primary care services to program beneficiaries that are funded by any county, state, or federal program.

(c) Each applicant shall demonstrate that it is an active Medi-Cal provider by having a Medi-Cal provider number and diligently billing the Medi-Cal program for services rendered to Medi-Cal eligible patients during the past three months. This subdivision shall not apply to clinics that are not currently Medi-Cal providers, and were funded participants pursuant to this article during the 1993–94 fiscal year.

(d) Each application shall be evaluated by the state department prior to funding to determine all of the following:

(1) The number of program beneficiaries who are in the service area of the applicant, and the number of visits, the scope of primary care services, and the proposed total budget for outpatient visits provided to beneficiaries under this article. The applicant shall provide its most recently audited financial statement to verify budget information.

(2) The applicant's ability to deliver basic primary care to program beneficiaries.

(3) A description of the applicant's operational quality assurance program.

(4) The applicant's use of protocols for the most common diseases in the population served under this article.

SEC. 5. Section 124911 is added to the Health and Safety Code, to read:

124911. (a) Commencing in the 1998–99 fiscal year, the department shall release a request for allocation of funds for a period of three succeeding fiscal years. The request for allocation shall include specifications for the clinics to submit uniform data on uncompensated patient visits.

(b) Annual funding awards for a clinic provider in the second and third fiscal years of a three-year funding period shall be contingent upon the clinic's satisfactory performance under the program, and upon the availability of sufficient funds appropriated by the annual Budget Act.

SEC. 6. Section 124920 of the Health and Safety Code is amended to read:

124920. (a) The department shall utilize existing contractual claims processing services in order to promote efficiency and to maximize use of funds.

(b) The department shall certify which primary care clinics are selected to participate in the program for each specific fiscal year,

and how much in program funds each selected primary care clinic will be allocated each fiscal year.

(c) The department shall make an advance payment for funds appropriated for services provided under this article to the selected primary care clinics in an amount not to exceed 25 percent of a clinic's allocation for visits provided to program beneficiaries. These advance payments may only be made during the 1994–95 fiscal year.

(d) In the event the department's contractual claims processing service is not ready to accept and timely adjudicate program claims by August 15, 1994, the department shall reimburse clinic billings in excess of the advance payment until such time as the contractual claims processing mechanism is viable.

(e) The department shall pay claims from selected primary care clinics up to each clinic's annual allocation, adjusted for advance payments made under subdivision (c) and claims reimbursement made under subdivision (d). Once a clinic has exhausted its annual allocation, the state shall stop paying its program claims.

(f) The department may adjust any selected primary care clinic's allocation to take into account:

(1) An increase in program funds appropriated for the fiscal year.

(2) A decrease in program funds appropriated for the fiscal year.

(3) A clinic's projected inability to fully spend its allocation within the fiscal year.

(4) Surplus funds reallocated from other selected primary care clinics.

(g) The department shall notify all affected primary care clinics in writing prior to adjusting selected primary care clinics' allocations.

(h) Cessation of program payments under subdivision (e) or adjustment of selected primary care clinic's allocations under subdivision (f) shall not be subject to the Medi-Cal appeals process referenced in subdivision (g) of Section 124900.

(i) A clinic's allocation under this article shall not be reduced solely because the clinic has engaged in supplemental fundraising drives and activities, the proceeds of which have been used to defray the costs of services to the uninsured.

SEC. 7. Section 124935 of the Health and Safety Code is repealed.

CHAPTER 884

An act relating to the Korean American Museum.

[Approved by Governor September 26, 1998. Filed with Secretary of State September 28, 1998.]

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

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

(a) The history of our nation and this state is a rich and enduring tapestry woven with the threads of many remarkable lives, cultures, and events.

(b) The lives, work, and artistry of Korean Americans have added strength, vitality, and purpose to that tapestry.

(c) Korean Americans constitute one of the fastest growing populations in the nation, with the majority making their home in this state.

(d) In order to preserve American history and culture from the unique perspective of the generations of Korean Americans who have contributed to our national fabric, the Korean American Museum was established.

(e) The Korean American Museum was formed as a nonprofit organization in 1991 and officially opened to the public in its temporary site in the Koreatown community in Los Angeles on February 23, 1995.

(f) The Korean American Museum has already firmly established itself as a significant cultural resource for the Korean American and multicultural communities in this state and the nation, hosting numerous exhibitions and events.

(g) Through the work of the museum, precious Korean American traditions and folklore, moving oral histories, records of painful obstacles overcome, and hard fought successes are being preserved for all Americans and visitors to our country to study, admire, and treasure as they explore the pieces of our national character.

(h) The museum also serves as an educational and resource center for the exchange of ideas and experiences related to life in multi-ethnic and multi-cultural America and as a vital force in bridging communities and generations of different cultural backgrounds.

(i) The museum is working in partnership with the City of Los Angeles and the private sector to secure funding in order to obtain a permanent facility for the museum center.

SEC. 2. State funding for the Korean American Museum is contingent upon funding provided in the Budget Act of 1998.

CHAPTER 885

An act to amend Section 830.7 of the Penal Code, and to amend Sections 40202 and 40225 of, and to add and repeal Section 1808.25 of, the Vehicle Code, relating to the vehicles.

[Approved by Governor September 26, 1998. Filed with Secretary of State September 28, 1998.]

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

SECTION 1. Section 830.7 of the Penal Code is amended to read:

830.7. The following persons are not peace officers but may exercise the powers of arrest of a peace officer as specified in Section 836 during the course and within the scope of their employment, if they successfully complete a course in the exercise of those powers pursuant to Section 832:

(a) Persons designated by a cemetery authority pursuant to Section 8325 of the Health and Safety Code.

(b) Persons regularly employed as security officers for independent institutions of higher education, recognized under subdivision (b) of Section 66010 of the Education Code, if the institution has concluded a memorandum of understanding, permitting the exercise of that authority, with the sheriff or the chief of police within whose jurisdiction the institution lies.

(c) Persons regularly employed as security officers for health facilities, as defined in Section 1250 of the Health and Safety Code, that are owned and operated by cities, counties, and cities and counties, if the facility has concluded a memorandum of understanding, permitting the exercise of that authority, with the sheriff or the chief of police within whose jurisdiction the facility lies.

(d) Employees or classes of employees of the California Department of Forestry and Fire Protection designated by the Director of Forestry and Fire Protection, provided that the primary duty of the employee shall be the enforcement of the law as that duty is set forth in Section 4156 of the Public Resources Code.

(e) Persons regularly employed as inspectors, supervisors, or security officers for transit districts, as defined in Section 99213 of the Public Utilities Code, if the district has concluded a memorandum of understanding permitting the exercise of that authority, with, as applicable, the sheriff, the chief of police, or the Department of the California Highway Patrol within whose jurisdiction the district lies. For the purposes of this subdivision, the exercise of peace officer authority may include the authority to remove a vehicle from a railroad right-of-way as set forth in Section 22656 of the Vehicle Code.

(f) Nonpeace officers regularly employed as county parole officers pursuant to Section 3089.

(g) Persons appointed by the Executive Director of the California Science Center pursuant to Section 4108 of the Food and Agricultural Code.

SEC. 2. Section 1808.25 is added to the Vehicle Code, to read:

1808.25. (a) The department shall implement a pilot program to provide residence address information to independent institutions of higher education that have concluded a memorandum of

understanding pursuant to subdivision (b) of Section 830.7 of the Penal Code, if the institutions request the address solely for the purpose of enforcing parking restrictions.

For the purposes of this subdivision, a participating institution shall enter into a contractual agreement with the department that, at a minimum, requires the institution to do both of the following:

(1) Establish and maintain procedures, to the satisfaction of the department, for persons to contest parking violation notices issued by the institution.

(2) Remit a fee, as determined by the department, to cover the department's costs of providing each address to the institution.

(b) The department shall submit a report to the Legislature containing its evaluation of the pilot program which shall include a recommendation as to the advisability of continuing the program. The report shall be submitted on or before January 1, 2001.

(c) The director may terminate a contract authorized by subdivision (a) at any time the department determines that an independent institution of higher education fails to maintain adequate safeguards to ensure that the operation of the program does not adversely effect those individuals whose records are maintained in the department's files, or if the information is used for any purpose other than that specified in subdivision (a).

(d) This section shall remain in effect only until January 1, 2002, and as of that date is repealed unless a later enacted statute, which is enacted before January 1, 2002, deletes or extends that date.

SEC. 3. Section 40202 of the Vehicle Code is amended to read:

40202. (a) If a vehicle is unattended during the time of the violation, the peace officer or person authorized to enforce parking laws and regulations shall securely attach to the vehicle a notice of parking violation setting forth the violation, including reference to the section of this code or of the Public Resources Code, the local ordinance, or the federal statute or regulation so violated; the date; the approximate time thereof; the location where the violation occurred; a statement printed on the notice indicating that the date of payment is required to be made not later than 21 calendar days from the date of citation issuance; and the procedure for the registered owner, lessee, or rentee to deposit the parking penalty or, pursuant to Section 40215, contest the citation. The notice of parking violation shall also set forth the vehicle license number and registration expiration date if they are visible, the last four digits of the vehicle identification number, if that number is readable through the windshield, the color of the vehicle, and, if possible, the make of the vehicle. The notice of parking violation, or copy thereof, shall be considered a record kept in the ordinary course of business of the issuing agency and the processing agency and shall be prima facie evidence of the facts contained therein.

(b) The notice of parking violation shall be served by attaching it to the vehicle either under the windshield wiper or in another

conspicuous place upon the vehicle so as to be easily observed by the person in charge of the vehicle upon the return of that person.

(c) Once the issuing officer has prepared the notice of parking violation and has attached it to the vehicle as provided in subdivisions (a) and (b), the officer shall file the notice with the processing agency. Any person, including the issuing officer and any member of the officer's department or agency, or any peace officer who alters, conceals, modifies, nullifies, or destroys, or causes to be altered, concealed, modified, nullified, or destroyed the face of the remaining original or any copy of a citation that was retained by the officer, for any reason, before it is filed with the processing agency or with a person authorized to receive the deposit of the parking penalty, is guilty of a misdemeanor.

(d) If, during the issuance of a notice of parking violation, without regard to whether the vehicle was initially attended or unattended, the vehicle is driven away prior to attaching the notice to the vehicle, the issuing officer shall file the notice with the processing agency. The processing agency shall mail, within 15 calendar days of issuance of the notice of parking violation, a copy of the notice of parking violation or transmit an electronic facsimile of the notice to the registered owner.

(e) If, within 21 days after the notice of parking violation is attached to the vehicle, the issuing officer or the issuing agency determines that, in the interest of justice, the notice of parking violation should be canceled, the issuing agency, pursuant to subdivision (a) of Section 40215, shall cancel the notice of parking violation or, if the issuing agency has contracted with a processing agency, shall notify the processing agency to cancel the notice of parking violation pursuant to subdivision (a) of Section 40215. The reason for the cancellation shall be set forth in writing.

If, after a copy of the notice of parking violation is attached to the vehicle, the issuing officer determines that there is incorrect data on the notice, including, but not limited to, the date or time, the issuing officer may indicate in writing, on a form attached to the original notice, the necessary correction to allow for the timely entry of the notice on the processing agency's data system. A copy of the correction shall be mailed to the registered owner of the vehicle.

(f) Under no circumstances shall a personal relationship with any officer, public official, or law enforcement agency be grounds for cancellation.

SEC. 4. Section 40225 of the Vehicle Code is amended to read:

40225. (a) An equipment violation entered on the notice of parking violation attached to the vehicle under Section 40203 shall be processed in accordance with this article. All of the violations entered on the notice of parking violation shall be noticed in the notice of delinquent parking violation delivered pursuant to Section 40206, together with the amount of civil penalty.

(b) Whether or not a vehicle is in violation of any regulation governing the standing or parking of a vehicle but is in violation of subdivision (a) of Section 5204, a person authorized to enforce parking laws and regulations shall issue a written notice of parking violation, setting forth the alleged violation. The violation shall be processed pursuant to this section.

(c) The civil penalty for each equipment violation, including failure to properly display a license plate, is the amount established for the violation in the Uniform Bail and Penalty Schedule, as adopted by the Judicial Council, except that upon proof of the correction to the processing agency, the penalty shall be reduced to ten dollars ($10). The reduction provided for in this subdivision involving failure to properly display license plates shall only apply if, at the time of the violation, valid license plates were issued for that vehicle in accordance with this code. The civil penalty for each violation of Section 5204 is the amount established for the violation in the Uniform Bail and Penalty Schedule, as adopted by the Judicial Council, except that upon proof of the correction to the processing agency, the penalty shall be reduced to ten dollars ($10).

(d) Fifty percent of any penalty collected pursuant to this section for registration or equipment violations by a processing agency shall be paid to the county for remittance to the State Treasurer and the remaining 50 percent shall be retained by the issuing agency and processing agency subject to the terms of the contract described in Section 40200.5.

(e) Subdivisions (a) and (b) do not preclude the recording of a violation of subdivision (a) or (b) of Section 4000 on a notice of parking violation or the adjudication of that violation under the civil process set forth in this article.

CHAPTER 886

An act to amend Sections 311.5, 1701.1, 1701.2, 1701.3, 1701.4, 1706, 1759, and 1760 of, to amend, repeal, and add Sections 311, 1756, and 1758 of, to repeal Sections 311 and 1765 of, and to repeal, add and repeal, and add Sections 1757 and 1757.1 of, the Public Utilities Code, and to repeal Section 26 of Chapter 855 of the Statutes of 1996, relating to the Public Utilities Commission, and making an appropriation therefor.

[Approved by Governor September 26, 1998. Filed with Secretary of State September 28, 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 Calderon-Peace-MacBride Judicial Review Act of 1998.

SEC. 1.5. (a) The Legislature finds and declares that the conversion of the energy, transportation, and telecommunications industries from traditional regulated markets to competitive markets necessitates a change in the judicial review of Public Utilities Commission decisions that pertain to those industries. The Legislature finds that the activities of the energy, telecommunications, and transportation industries will require expanded access to the court system at all levels. The Legislature finds that uniformity of evolving decisional law and judicial economy will be achieved by providing for appellate review of certain Public Utilities Commission decisions. The Legislature further finds and declares that inasmuch as the water supply industry continues to operate in a traditional, noncompetitive utility market, that changes in judicial review of competitive utility markets are inappropriate in their application to Public Utilities Commission decisions and proceedings that pertain to water corporations until January 1, 2001.

(b) It is the intent of the Legislature in enacting the judicial review provisions of this act to, in part, establish the manner and scope of review taken from decisions of the Public Utilities Commission. It is further the intent of the Legislature to conform judicial review of the Public Utilities Commission decisions that pertain to utility service providers with competitive markets to be consistent with judicial review of the other state agencies. It is the intent of the Legislature to, among other things, overrule Camp Meeker Water System, Inc. v. Public Utilities Commission, 51 Cal.3d 845, as it pertains only to decisions affecting the energy, transportation, and communications industries, but to leave that decision in place as it pertains to water corporations until January 1, 2001. Further, it is the intent of the Legislature that decisions by the commission pertaining to the energy, transportation, and communications industries, and pertaining to water corporations on and after January 1, 2001, be subject to review on grounds similar to those of other state agencies.

SEC. 2. Section 311 of the Public Utilities Code, as amended by Section 5 of Chapter 856 of the Statutes of 1996, is amended to read:

311. (a) The commission, each commissioner, the executive director, and the assistant executive directors may administer oaths, certify to all official acts, and issue subpoenas for the attendance of witnesses and the production of papers, waybills, books, accounts, documents, and testimony in any inquiry, investigation, hearing, or proceeding in any part of the state.

(b) The administrative law judges may administer oaths, examine witnesses, issue subpoenas, and receive evidence, under rules that the commission adopts.

(c) The evidence in any hearing shall be taken by the commissioner or the administrative law judge designated for that purpose. The commissioner or the administrative law judge may

receive and exclude evidence offered in the hearing in accordance with the rules of practice and procedure of the commission.

(d) Consistent with the procedures contained in Sections 1701.1, 1701.2, 1701.3, and 1701.4, the assigned commissioner or the administrative law judge shall prepare and file an opinion setting forth recommendations, findings, and conclusions. The opinion of the assigned commissioner or the administrative law judge is the proposed decision and a part of the public record in the proceeding. The proposed decision of the assigned commissioner or the administrative law judge shall be filed with the commission and served upon all parties to the action or proceeding without undue delay, not later than 90 days after the matter has been submitted for decision. The commission shall issue its decision not sooner than 30 days following filing and service of the proposed decision by the assigned commissioner or the administrative law judge, except that the 30-day period may be reduced or waived by the commission in an unforeseen emergency situation or upon the stipulation of all parties to the proceeding or as otherwise provided by law. The commission may, in issuing its decision, adopt, modify, or set aside the proposed decision or any part of the decision. Where the modification is of a decision in an adjudicatory hearing it shall be based upon the evidence in the record. Every finding, opinion, and order made in the proposed decision and approved or confirmed by the commission shall, upon that approval or confirmation, be the finding, opinion, and order of the commission.

(e) Any item appearing on the commission's public agenda as an alternate item to a proposed decision or to a decision subject to subdivision (g) shall be served upon all parties to the proceeding without undue delay and shall be subject to public review and comment before it may be voted upon. For purposes of this subdivision "alternate" means either a substantive revision to a proposed decision that materially changes the resolution of a contested issue or any substantive addition to the findings of fact, conclusions of law, or ordering paragraphs. The commission shall adopt rules that provide for the time and manner of review and comment and the rescheduling of the item on a subsequent public agenda, except that the item may not be rescheduled for consideration sooner than 10 days following service of the alternative item upon all parties. The commission's rules may provide that the time and manner of review and comment on an alternate item may be reduced or waived by the commission in an unforeseen emergency situation.

(f) The commission may specify that the administrative law judge assigned to a proceeding involving an electrical, gas, telephone, railroad, or water corporation, or a highway carrier, initiated by customer or subscriber complaint need not prepare, file, and serve an opinion, unless the commission finds that to do so is required in the public interest in a particular case.

(g) (1) Prior to voting on any commission decision not subject to subdivision (d), the decision shall be served on parties and subject to at least 30 days public review and comment. Any alternate to any commission decision shall be subject to the same requirements as provided for alternate decisions under subdivision (e). For purposes of this subdivision, "decision" also includes resolutions, including resolutions on advice letter filings.

(2) The 30-day period may be reduced or waived in an unforeseen emergency situation, upon the stipulation of all parties in the proceeding, for an uncontested matter in which the decision grants the relief requested, or for an order seeking temporary injunctive relief.

(3) This subdivision does not apply to advice letter filings or to uncontested matters, that pertain solely to water corporations, or to orders instituting investigations or rulemakings, categorization resolutions under Sections 1701.1 to 1701.4, inclusive, or orders authorized by law to be considered in executive session. Consistent with regulatory efficiency and the need for adequate prior notice and comment on commission decisions, the commission may adopt rules, after notice and comment, establishing additional categories of decisions subject to waiver or reduction of the time period in this section.

(h) Notwithstanding any other provision of law, amendments, revisions, or modifications by the commission of its Rules of Practice and Procedure after January 1, 1999, shall be submitted to the Office of Administrative Law for prior review in accordance with Sections 11349, 11349.3, 11349.4, 11349.5, 11349.6, and 11350.3 of, and subdivisions (a) and (b) of Section 11349.1 of, the Government Code. If the commission adopts an emergency revision to its Rules of Practice and Procedure based upon a finding that the revision is necessary for the preservation of the public peace, health and safety, or general welfare, this emergency revision shall only be reviewed by the Office of Administrative Law in accordance with subdivisions (b) to (d), inclusive, of Section 11349.6 of the Government Code. The emergency revision shall become effective upon filing with the Secretary of State and shall remain in effect for no more than 120 days. A petition for writ of review pursuant to Section 1756 of a commission decision amending, revising, or modifying its Rules of Practice and Procedure shall not be filed until the regulation has been approved by the Office of Administrative Law, the Governor, or a court pursuant to Section 11350.3 of the Government Code. If the period for filing the petition for writ of review would otherwise have already commenced under Section 1733 or 1756 at the time of that approval, then the period for filing the petition for writ of review shall continue until 30 days after the date of that approval. Nothing in this subdivision shall require the commission to comply with Article 5 (commencing with Section 11346) of Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code. This subdivision is

only intended to provide for the Office of Administrative Law review of procedural commission decisions relating to Commission Rules of Practice and Procedure, and not General Orders, resolutions, or other substantive regulations.

(i) 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. 2.5. Section 311 is added to the Public Utilities Code, to read:

311. (a) The commission, each commissioner, the executive director, and the assistant executive directors may administer oaths, certify to all official acts, and issue subpoenas for the attendance of witnesses and the production of papers, waybills, books, accounts, documents, and testimony in any inquiry, investigation, hearing, or proceeding in any part of the state.

(b) The administrative law judges may administer oaths, examine witnesses, issue subpoenas, and receive evidence, under rules that the commission adopts.

(c) The evidence in any hearing shall be taken by the commissioner or the administrative law judge designated for that purpose. The commissioner or the administrative law judge may receive and exclude evidence offered in the hearing in accordance with the rules of practice and procedure of the commission.

(d) Consistent with the procedures contained in Sections 1701.1, 1701.2, 1701.3, and 1701.4, the assigned commissioner or the administrative law judge shall prepare and file an opinion setting forth recommendations, findings, and conclusions. The opinion of the assigned commissioner or the administrative law judge is the proposed decision and a part of the public record in the proceeding. The proposed decision of the assigned commissioner or the administrative law judge shall be filed with the commission and served upon all parties to the action or proceeding without undue delay, not later than 90 days after the matter has been submitted for decision. The commission shall issue its decision not sooner than 30 days following filing and service of the proposed decision by the assigned commissioner or the administrative law judge, except that the 30-day period may be reduced or waived by the commission in an unforeseen emergency situation or upon the stipulation of all parties to the proceeding or as otherwise provided by law. The commission may, in issuing its decision, adopt, modify, or set aside the proposed decision or any part of the decision. Where the modification is of a decision in an adjudicatory hearing it shall be based upon the evidence in the record. Every finding, opinion, and order made in the proposed decision and approved or confirmed by the commission shall, upon that approval or confirmation, be the finding, opinion, and order of the commission.

(e) Any item appearing on the commission's public agenda as an alternate item to a proposed decision or to a decision subject to subdivision (g) shall be served upon all parties to the proceeding

without undue delay and shall be subject to public review and comment before it may be voted upon. For purposes of this subdivision "alternate" means either a substantive revision to a proposed decision that materially changes the resolution of a contested issue or any substantive addition to findings of fact, conclusions of law, or ordering paragraphs. The commission shall adopt rules that provide for the time and manner of review and comment and the rescheduling of the item on a subsequent public agenda, except that the item may not be rescheduled for consideration sooner than 10 days following service of the alternative item upon all parties. The commission's rules may provide that the time and manner of review and comment on an alternate item may be reduced or waived by the commission in an unforeseen emergency situation.

(f) The commission may specify that the administrative law judge assigned to a proceeding involving an electrical, gas, telephone, railroad, or water corporation, or a highway carrier, initiated by customer or subscriber complaint need not prepare, file, and serve an opinion, unless the commission finds that to do so is required in the public interest in a particular case.

(g) (1) Prior to voting on any commission decision not subject to subdivision (d), the decision shall be served on parties and subject to at least 30 days public review and comment. Any alternate to any commission decision shall be subject to the same requirements as provided for alternate decisions under subdivision (e). For purposes of this subdivision, "decision" also includes resolutions, including resolutions on advice letter filings.

(2) The 30-day period may be reduced or waived in an unforeseen emergency situation, upon the stipulation of all parties in the proceeding, for an uncontested matter in which the decision grants the relief requested, or for an order seeking temporary injunctive relief.

(3) This subdivision does not apply to orders instituting investigations or rulemakings, categorization resolutions under Sections 1701.1 to 1701.4, inclusive, or orders authorized by law to be considered in executive session. Consistent with regulatory efficiency and the need for adequate prior notice and comment on commission decisions, the commission may adopt rules, after notice and comment, establishing additional categories of decisions subject to waiver or reduction of the time period in this section.

(h) Notwithstanding any other provision of law, amendments, revisions, or modifications by the commission of its Rules of Practice and Procedure after January 1, 1999, shall be submitted to the Office of Administrative Law for prior review in accordance with Sections 11349, 11349.3, 11349.4, 11349.5, 11349.6, and 11350.3 of, and subdivisions (a) and (b) of Section 11349.1 of, the Government Code. If the commission adopts an emergency revision to its Rules of Practice and Procedure based upon a finding that the revision is

necessary for the preservation of the public peace, health and safety, or general welfare, this emergency revision shall only be reviewed by the Office of Administrative Law in accordance with subdivisions (b) to (d), inclusive, of Section 11349.6 of the Government Code. The emergency revision shall become effective upon filing with the Secretary of State and shall remain in effect for no more than 120 days. A petition for writ of review pursuant to Section 1756 of a commission decision amending, revising, or modifying its Rules of Practice and Procedure shall not be filed until the regulation has been approved by the Office of Administrative Law, the Governor, or a court pursuant to Section 11350.3 of the Government Code. If the period for filing the petition for writ of review would otherwise have already commenced under Section 1733 or 1756 at the time of that approval, then the period for filing the petition for writ of review shall continue until 30 days after the date of that approval. Nothing in this subdivision shall require the commission to comply with Article 5 (commencing with Section 11346) of Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code. This subdivision is only intended to provide for the Office of Administrative Law review of procedural commission decisions relating to commission Rules of Practice and Procedure, and not General Orders, resolutions, or other substantive regulations.

(i) This section shall become operative on January 1, 2001.

SEC. 3. Section 311 of the Public Utilities Code, as added by Section 6 of Chapter 856 of the Statutes of 1996, is repealed.

SEC. 4. Section 311.5 of the Public Utilities Code is amended to read:

311.5. (a) (1) Prior to commencement of any meeting at which commissioners vote on items on the public agenda the commission shall make available to the public copies of the agenda, and upon request, any agenda item documents that are proposed to be considered by the commission for action or decision at a commission meeting.

(2) In addition, the commission shall publish the agenda, agenda item documents, and adopted decisions in a manner that makes copies of them easily available to the public, including, commencing publishing those documents on the commission's Internet site, commencing not later than July 1, 1999. Publication of the agenda and agenda item documents shall occur on the Internet site at the same time as the written agenda and agenda item documents are made available to the public.

(b) For decisions and resolutions adopted on or after July 1, 1999, the commission, at its Internet site, shall publish and maintain electronically all of its decisions and resolutions. That publication shall occur within 10 days of the adoption of a decision or resolution by the commission.

(c) Commencing on July 1, 1999, the commission shall publish at its Internet site the then-current version of its general orders and Rules of Practice and Procedure.

(d) The commission shall publish electronically at its Internet site all rulings issued on or after July 1, 1999, in all proceedings. The commission shall maintain those rulings at its site until final disposition, including disposition of any judicial appeals, of the respective proceedings in which the rulings were issued.

(e) For each proceeding filed on or after July 1, 1999, the commission shall publish electronically at its Internet site a docket card that shall list, by title and date of filing or issuance, all documents filed and all decisions or rulings issued in such proceeding. The commission shall maintain the docket card until final disposition, including disposition of any judicial appeals, of the corresponding proceedings.

SEC. 5. Section 1701.1 of the Public Utilities Code is amended to read:

1701.1. (a) The commission, consistent with due process, public policy, and statutory requirements, shall determine whether a proceeding requires a hearing. The commission shall determine whether the matter requires a quasi-legislative, an adjudication, or a ratesetting hearing. The commission's decision as to the nature of the proceeding shall be subject to a request for rehearing within 10 days of the date of that decision. If that decision is not appealed to the commission within that time period it shall not be subsequently subject to judicial review. Only those parties who have requested a rehearing within that time period shall subsequently have standing for judicial review and that review shall only be available at the conclusion of the proceeding. The commission shall render its decision regarding the rehearing within 30 days. The commission shall establish regulations regarding ex parte communication on case categorization issues.

(b) The commission upon initiating a hearing shall assign one or more commissioners to oversee the case and an administrative law judge where appropriate. The assigned commissioner shall schedule a prehearing conference. The assigned commissioner shall prepare and issue by order or ruling a scoping memo that describes the issues to be considered and the applicable timetable for resolution.

(c) (1) Quasi-legislative cases, for purposes of this article, are cases that establish policy, including, but not limited to, rulemakings and investigations which may establish rules affecting an entire industry.

(2) Adjudication cases, for purposes of this article, are enforcement cases and complaints except those challenging the reasonableness of any rates or charges as specified in Section 1702.

(3) Ratesetting cases, for purposes of this article, are cases in which rates are established for a specific company, including, but not

limited to, general rate cases, performance-based ratemaking, and other ratesetting mechanisms.

(4) "Ex parte communication," for purposes of this article, means any oral or written communication between a decisionmaker and a person with an interest in a matter before the commission concerning substantive, but not procedural issues, that does not occur in a public hearing, workshop, or other public proceeding, or on the official record of the proceeding on the matter. "Person with an interest," for purposes of this article, means any of the following:

(A) Any applicant, an agent or an employee of the applicant, or a person receiving consideration for representing the applicant, or a participant in the proceeding on any matter before the commission.

(B) Any person with a financial interest, as described in Article 1 (commencing with Section 87100) of Chapter 7 of Title 9 of the Government Code, in a matter before the commission, or an agent or employee of the person with a financial interest, or a person receiving consideration for representing the person with a financial interest.

(C) A representative acting on behalf of any civic, environmental, neighborhood, business, labor, trade, or similar organization who intends to influence the decision of a commission member on a matter before the commission.

The commission shall by regulation adopt and publish a definition of decisionmakers and persons for purposes of this section, along with any requirements for written reporting of ex parte communications and appropriate sanctions for noncompliance with any rule proscribing ex parte communications. The regulation shall provide that reportable communications shall be reported by the party, whether the communication was initiated by the party or the decisionmaker. Communications shall be reported within three working days of the communication by filing the original and 12 copies of a "Notice of Ex Parte Communication" with the commission. The notice shall include the following information:

(i) The date, time, and location of the communication, and whether it was oral, written, or a combination.

(ii) The identity of the recipient and the person initiating the communication, as well as the identity of any persons present during the communication.

(iii) A description of the party's, but not the decisionmaker's, communication and its content, to which shall be attached a copy of any written material or text used during the communication.

SEC. 6. Section 1701.2 of the Public Utilities Code is amended to read:

1701.2. (a) If the commission pursuant to Section 1701.1 has determined that an adjudication case requires a hearing, the procedures prescribed by this section shall be applicable. The assigned commissioner or the assigned administrative law judge shall hear the case in the manner described in the scoping memo. The

scoping memo shall designate whether the assigned commissioner or the assigned administrative law judge shall preside in the case. The commission shall provide by regulation for peremptory challenges and challenges for cause of the administrative law judge. Challenges for cause shall include, but not be limited to, financial interests and prejudice. The regulation shall provide that all parties are entitled to one peremptory challenge of the assignment of the administrative law judge in all cases. All parties are entitled to unlimited peremptory challenges in any case in which the administrative law judge has within the previous 12 months served in any capacity in an advocacy position at the commission, been employed by a regulated public utility, or has represented a party or has been a party of interest in the case. The assigned commissioner or the administrative law judge shall prepare and file a decision setting forth recommendations, findings, and conclusions. The decision shall be filed with the commission and served upon all parties to the action or proceeding without undue delay, not later than 60 days after the matter has been submitted for decision. The decision of the assigned commissioner or the administrative law judge shall become the decision of the commission if no further action is taken within 30 days. Any interested party may appeal the decision to the commission, provided that the appeal is made within 30 days of the issuance of the decision. The commission may itself initiate a review of the proposed decision on any grounds. The commission decision shall be based on the record developed by the assigned commissioner or the administrative law judge. A decision different from that of the assigned commissioner or the administrative law judge shall be accompanied by a written explanation of each of the changes made to the decision.

(b) Ex parte communications shall be prohibited in adjudication cases.

(c) Notwithstanding any other provision of law, the commission may meet in a closed hearing to consider the decision that is being appealed. The vote on the appeal shall be in a public meeting and shall be accompanied with an explanation of the appeal decision.

(d) Adjudication cases shall be resolved within 12 months of initiation unless the commission makes findings why that deadline cannot be met and issues an order extending that deadline. In the event that a rehearing of an adjudication case is granted the parties shall have an opportunity for final oral argument.

SEC. 7. Section 1701.3 of the Public Utilities Code is amended to read:

1701.3. (a) If the commission pursuant to Section 1701.1 has determined that a ratesetting case requires a hearing, the procedures prescribed by this section shall be applicable. The assigned commissioner shall determine prior to the first hearing whether the commissioner or the assigned administrative law judge shall be designated as the principal hearing officer. The principal hearing

officer shall be present for more than one-half of the hearing days. The decision of the principal hearing officer shall be the proposed decision. An alternate decision may be issued by the assigned commissioner or the assigned administrative law judge who is not the principal hearing officer. The commission shall establish a procedure for any party to request the presence of a commissioner at a hearing. The assigned commissioner shall be present at the closing arguments of the case. The principal hearing officer shall present the proposed decision to the full commission in a public meeting. The alternate decision, if any, shall also be presented to the full commission at that public meeting. The alternate decision shall be filed with the commission and shall be served on all parties simultaneously with the proposed decision.

The presentation to the full commission shall contain a record of the number of days of the hearing, the number of days that each commissioner was present, and whether the decision was completed on time.

(b) The commission shall provide by regulation for peremptory challenges and challenges for cause of the administrative law judge. Challenges for cause shall include, but not be limited to, financial interests and prejudice. All parties shall be entitled to unlimited peremptory challenges in any case in which the administrative law judge has within the previous 12 months served in any capacity in an advocacy position at the commission, been employed by a regulated public utility, or has represented a party or has been a party of interest in the case.

(c) Ex parte communications are prohibited in ratesetting cases. However, oral ex parte communications may be permitted at any time by any commissioner if all interested parties are invited and given not less than three days' notice. Written ex parte communications may be permitted by any party provided that copies of the communication are transmitted to all parties on the same day. If an ex parte communication meeting is granted to any party, all other parties shall also be granted individual ex parte meetings of a substantially equal period of time and shall be sent a notice of that authorization at the time that the request is granted. In no event shall that notice be less than three days. The commission may establish a period during which no oral or written ex parte communications shall be permitted and may meet in closed session during that period which shall not in any circumstance exceed 14 days. If the commission holds the decision it may permit ex parte communications during the first half of the interval between the hold date and the date that the decision is calendered for final decision. The commission may meet in closed session for the second half of that interval.

(d) Any party has the right to present a final oral argument of its case before the commission. Those requests shall be scheduled in a timely manner. A quorum of the commission shall be present for the final oral arguments.

(e) The commission may, in issuing its decision, adopt, modify, or set aside the proposed decision or any part of the decision based on evidence in the record. The final decision of the commission shall be issued not later than 60 days after the issuance of the proposed decision. Under extraordinary circumstances the commission may extend this date for a reasonable period. The 60-day period shall be extended for 30 days if any alternate decision is proposed pursuant to Section 311.

SEC. 8. Section 1701.4 of the Public Utilities Code is amended to read:

1701.4. (a) If the commission pursuant to Section 1701.1 has determined that a quasi-legislative case requires a hearing, the procedures prescribed by this section shall be applicable. The assigned administrative law judge shall act as an assistant to the assigned commissioner in quasi-legislative cases. The assigned commissioner shall be present for formal hearings. The assigned commissioner shall prepare the proposed rule or order with the assistance of the administrative law judge. The assigned commissioner shall present the proposed rule or order to the full commission in a public meeting. The report shall include the number of days of hearing and the number of days that the commissioner was present.

(b) Ex parte communications shall be permitted without any restrictions.

(c) Any party has the right to present a final oral argument of its case before the commission. Those requests shall be scheduled in a timely manner. A quorum of the commission shall be present for the final oral arguments.

(d) The commission may, in issuing its rule or order, adopt, modify, or set aside the proposed decision or any part of the rule or order. The final rule or order of the commission shall be issued not later than 60 days after the issuance of the proposed rule or order. Under extraordinary circumstances the commission may extend this date for a reasonable period. The 60-day period shall be extended for 30 days if any alternate rule or order is proposed pursuant to Section 311.

SEC. 9. Section 1706 of the Public Utilities Code is amended to read:

1706. A complete record of all proceedings and testimony before the commission or any commissioner on any formal hearing shall be taken down by a reporter appointed by the commission, and the parties shall be entitled to be heard in person or by attorney. In case of an action to review any order or decision of the commission, a transcript of that testimony, together with all exhibits or copies thereof introduced, and of the pleadings, record, and proceedings in the cause, shall constitute the record of the commission, but if the petitioner and the commission stipulate that certain questions alone and a specified portion only of the evidence shall be certified to the

Supreme Court or the court of appeal for its judgment, the stipulation and the questions and the evidence therein specified shall constitute the record on review. The provisions of this section shall not apply to hearings held pursuant to Section 1702.1.

SEC. 10. Section 1756 of the Public Utilities Code is amended to read:

1756. (a) Within 30 days after the commission issues its decision denying the application for a rehearing, or, if the application was granted, then within 30 days after the commission issues its decision on rehearing, or at least 120 days after the application is granted if no decision on rehearing has been issued, any aggrieved party may petition for a writ of review in the court of appeal or the Supreme Court for the purpose of having the lawfulness of the original order or decision or of the order or decision on rehearing inquired into and determined. If the writ issues, it shall be made returnable at a time and place specified by court order and shall direct the commission to certify its record in the case to the court within the time specified.

(b) The petition for review shall be served upon the executive director of the commission either personally or by service at the office of the commission.

(c) For purposes of this section, the issuance of a decision or the granting of an application shall be construed to have occurred on the date when the commission mails the decision or grant to the parties to the action or proceeding.

(d) The venue of a petition filed in the court of appeal pursuant to this section shall be in the judicial district in which the petitioner resides. If the petitioner is a business, venue shall be in the judicial district in which the petitioner has its principal place of business in California.

(e) Any party may seek from the Supreme Court, pursuant to California Rules of Court, an order transferring related actions to a single appellate district.

(f) For purposes of this section, review of decisions pertaining solely to water corporations shall only be by petition for writ of review in the Supreme Court, except that review of complaint or enforcement proceedings may be in the court of appeal or the Supreme Court.

(g) No order or decision arising out of a commission proceeding under Section 854 shall be reviewable in the court of appeal pursuant to subdivision (a) if the application for commission authority to complete the merger or acquisition was filed on or before December 31, 1998, by two telecommunications-related corporations including at least one which provides local telecommunications service to over one million California customers. These orders or decisions shall be reviewed pursuant to the Public Utilities Code in existence on December 31, 1998.

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

SEC. 10.5. Section 1756 is added to the Public Utilities Code, to read:

1756. (a) Within 30 days after the commission issues its decision denying the application for a rehearing, or, if the application was granted, then within 30 days after the commission issues its decision on rehearing, or at least 120 days after the application is granted if no decision on rehearing has been issued, any aggrieved party may petition for a writ of review in the court of appeal or the Supreme Court for the purpose of having the lawfulness of the original order or decision or of the order or decision on rehearing inquired into and determined. If the writ issues, it shall be made returnable at a time and place specified by court order and shall direct the commission to certify its record in the case to the court within the time specified.

(b) The petition for review shall be served upon the executive director of the commission either personally or by service at the office of the commission.

(c) For purposes of this section, the issuance of a decision or the granting of an application shall be construed to have occurred on the date when the commission mails the decision or grant to the parties to the action or proceeding.

(d) The venue of a petition filed in the court of appeal pursuant to this section shall be in the judicial district in which the petitioner resides. If the petitioner is a business, venue shall be in the judicial district in which the petitioner has its principal place of business in California.

(e) Any party may seek from the Supreme Court, pursuant to California Rules of Court, an order transferring related actions to a single appellate district.

(f) No order or decision arising out of a commission proceeding under Section 854 shall be reviewable in the court of appeal pursuant to subdivision (a) if the application for commission authority to complete the merger or acquisition was filed on or before December 31, 1998, by two telecommunications-related corporations including at least one which provides local telecommunications service to over one million California customers. These orders or decisions shall be reviewed pursuant to the Public Utilities Code in existence on December 31, 1998.

(g) This section shall become operative on January 1, 2001.

SEC. 11. Section 1757 of the Public Utilities Code is repealed.

SEC. 12. Section 1757 is added to the Public Utilities Code, to read:

1757. (a) No new or additional evidence shall be introduced upon review by the court. In a complaint or enforcement proceeding, or in a ratemaking or licensing decision of specific application that is addressed to particular parties, the review by the

court shall not extend further than to determine, on the basis of the entire record which shall be certified by the commission, whether any of the following occurred:

(1) The commission acted without, or in excess of, its powers or jurisdiction.

(2) The commission has not proceeded in the manner required by law.

(3) The decision of the commission is not supported by the findings.

(4) The findings in the decision of the commission are not supported by substantial evidence in light of the whole record.

(5) The order or decision of the commission was procured by fraud or was an abuse of discretion.

(6) The order or decision of the commission violates any right of the petitioner under the Constitution of the United States or the California Constitution.

(b) Nothing in this section shall be construed to permit the court to hold a trial de novo, to take evidence other than as specified by the California Rules of Court, or to exercise its independent judgment on the evidence.

(c) Notwithstanding subdivision (a), the standard of review in this section shall not apply to ratemaking or licensing decisions of specific application addressed solely to water corporations.

(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. 12.5. Section 1757 is added to the Public Utilities Code, to read:

1757. (a) No new or additional evidence shall be introduced upon review by the court. In a complaint or enforcement proceeding, or in a ratemaking or licensing decision of specific application that is addressed to particular parties, the review by the court shall not extend further than to determine, on the basis of the entire record which shall be certified by the commission, whether any of the following occurred:

(1) The commission acted without, or in excess of, its powers or jurisdiction.

(2) The commission has not proceeded in the manner required by law.

(3) The decision of the commission is not supported by the findings.

(4) The findings in the decision of the commission are not supported by substantial evidence in light of the whole record.

(5) The order or decision of the commission was procured by fraud or was an abuse of discretion.

(6) The order or decision of the commission violates any right of the petitioner under the Constitution of the United States or the California Constitution.

(b) Nothing in this section shall be construed to permit the court to hold a trial de novo, to take evidence other than as specified by the California Rules of Court, or to exercise its independent judgment on the evidence.

(c) This section shall become operative on January 1, 2001.

SEC. 13. Section 1757.1 of the Public Utilities Code is repealed.

SEC. 14. Section 1757.1 is added to the Public Utilities Code, to read:

1757.1. (a) In any proceeding other than a proceeding subject to the standard of review under Section 1757, review by the court shall not extend further than to determine, on the basis of the entire record which shall be certified by the commission, whether any of the following occurred:

(1) The order or decision of the commission was an abuse of discretion.

(2) The commission has not proceeded in the manner required by law.

(3) The commission acted without, or in excess of, its powers or jurisdiction.

(4) The decision of the commission is not supported by the findings.

(5) The order or decision was procured by fraud.

(6) The order or decision of the commission violates any right of the petitioner under the Constitution of the United States or the California Constitution.

(b) In reviewing decisions pertaining solely to water corporations, the review shall not be extended further than to determine whether the commission has regularly pursued its authority, including a determination whether the order or decision under review violates any right of the petitioner under the Constitution of the United States or this state.

(c) No new or additional evidence shall be introduced upon review by the court. The findings and conclusions of the commission on findings of fact shall be final and shall not be subject to review except as provided in this article. The questions of fact shall include ultimate facts and findings and conclusions of the commission on reasonableness and discrimination.

(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. 14.5. Section 1757.1 is added to the Public Utilities Code, to read:

1757.1. (a) In any proceeding other than a proceeding subject to the standard of review under Section 1757, review by the court shall not extend further than to determine, on the basis of the entire record which shall be certified by the commission, whether any of the following occurred:

(1) The order or decision of the commission was an abuse of discretion.

(2) The commission has not proceeded in the manner required by law.

(3) The commission acted without, or in excess of, its powers or jurisdiction.

(4) The decision of the commission is not supported by the findings.

(5) The order or decision was procured by fraud.

(6) The order or decision of the commission violates any right of the petitioner under the Constitution of the United States or the California Constitution.

(b) No new or additional evidence shall be introduced upon review by the court. The findings and conclusions of the commission on findings of fact shall be final and shall not be subject to review except as provided in this section. The questions of fact shall include ultimate facts and findings and conclusions of the commission on reasonableness and discrimination.

(c) This section shall become operative on January 1, 2001.

SEC. 15. Section 1758 of the Public Utilities Code is amended to read:

1758. (a) The commission and each party to the action or proceeding before the commission may appear in the review proceeding.

Upon the hearing the Supreme Court or court of appeal shall enter judgment either affirming or setting aside the order or decision of the commission.

(b) The provisions of the Code of Civil Procedure relating to writs of review shall, so far as applicable and not in conflict with this part, apply to proceedings instituted in the Supreme Court or court of appeal under this article.

(c) Under this article, the Supreme Court may review decisions of the court of appeal in the manner provided for other civil actions.

(d) The Supreme Court shall grant expedited consideration to any party or commission petition alleging that the court of appeal has assumed jurisdiction to review a commission decision pertaining solely to water corporations over which the court of appeal has no jurisdiction.

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

SEC. 15.5. Section 1758 is added to the Public Utilities Code, to read:

1758. (a) The commission and each party to the action or proceeding before the commission may appear in the review proceeding.

Upon the hearing the Supreme Court or court of appeal shall enter judgment either affirming or setting aside the order or decision of the commission.

(b) The provisions of the Code of Civil Procedure relating to writs of review shall, so far as applicable and not in conflict with this part, apply to proceedings instituted in the Supreme Court or court of appeal under this article.

(c) Under this article, the Supreme Court may review decisions of the court of appeal in the manner provided for other civil actions.

(d) This section shall become operative on January 1, 2001.

SEC. 16. Section 1759 of the Public Utilities Code is amended to read:

1759. (a) No court of this state, except the Supreme Court and the court of appeal, to the extent specified in this article, shall have jurisdiction to review, reverse, correct, or annul any order or decision of the commission or to suspend or delay the execution or operation thereof, or to enjoin, restrain, or interfere with the commission in the performance of its official duties, as provided by law and the rules of court.

(b) The writ of mandamus shall lie from the Supreme Court and from the court of appeal to the commission in all proper cases as prescribed in Section 1085 of the Code of Civil Procedure.

SEC. 17. Section 1760 of the Public Utilities Code is amended to read:

1760. Notwithstanding Sections 1757 and 1757.1, in any proceeding wherein the validity of any order or decision is challenged on the ground that it violates any right of petitioner under the United States Constitution or the California Constitution, the Supreme Court or court of appeal shall exercise independent judgment on the law and the facts, and the findings or conclusions of the commission material to the determination of the constitutional question shall not be final.

SEC. 18. Section 1765 of the Public Utilities Code is repealed.

SEC. 19. This act shall apply to review of an order or a decision the effective date of which is on or after January 1, 1999. Review of orders or decisions the effective date of which is prior to January 1, 1999, shall be pursuant to the provisions of the Public Utilities Code in existence on December 31, 1998. However, where an order disposes of an application for rehearing of a decision or order the effective date of which was prior to January 1, 1999, or where an order is issued on rehearing of a decision or order the effective date of which was prior to January 1, 1999, review shall be pursuant to the provisions of the Public Utilities Code in existence on December 31, 1998.

SEC. 20. Section 26 of Chapter 855 of the Statutes of 1996 is repealed.

SEC. 21. The sum of eight hundred fourteen thousand dollars ($814,000) is hereby appropriated from the Public Utilities

Commission Utilities Reimbursement Account to the Public Utilities Commission for the purpose of funding the costs incurred by the commission in implementing the internet provisions of Section 311.5 of the Public Utilities Code as amended by this act.

CHAPTER 887

An act to amend Section 27491.47 of the Government Code, to amend Sections 7055 and 7151.5 of the Health and Safety Code, and to amend, repeal, and add Sections 12811 and 13005 of, and to add Sections 1672.3 and 1672.5 to, the Vehicle Code, relating to anatomical gifts.

[Approved by Governor September 26, 1998. Filed with Secretary of State September 28, 1998.]

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

SECTION 1. 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 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 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 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 the 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. 2. Section 7055 of the Health and Safety Code is amended to read:

7055. Every person, other than an officer of a duly accredited medical college engaged in official duties with respect to the body of a decedent who has willfully donated his or her body to the medical college, who for himself or herself or for another person, inters or incinerates a body or permits the same to be done, or removes any remains, other than cremated remains, from the primary registration district in which the death or incineration occurred or the body was found, except a removal by a funeral director in a funeral director's conveyance from that registration district to another registration district in the same or another county, without the authority of a burial or removal permit issued by the local registrar of the district in which the death occurred or in which the body was found; or removes interred human remains from the cemetery in which the interment occurred, or removes cremated remains from the premises on which the cremation occurred without the authority of a removal permit is guilty of a misdemeanor and punishable as follows:

(a) For the first offense, by a fine of not less than ten dollars ($10) nor more than five hundred dollars ($500).

(b) For each subsequent offense, by a fine of not less than fifty dollars ($50) nor more than five hundred dollars ($500) or imprisonment in the county jail for not more than 60 days, or by both.

SEC. 3. Section 7151.5 of the Health and Safety Code is amended to read:

7151.5. (a) Except as provided in Section 7152, the coroner or medical examiner may release and permit the removal of a part from

a body within that official's custody, for transplantation, therapy, or reconditioning, if all of the following occur:

(1) The official has received a request for the part from a hospital, physician, surgeon, or procurement organization or, in the case of a pacemaker, from a person who reconditions pacemakers.

(2) A reasonable effort has been made to locate and inform persons listed in subdivision (a) of Section 7151 of their option to make, or object to making, an anatomical gift. Except in the case where the useful life of the part does not permit, a reasonable effort shall be deemed to have been made when a search for the persons has been underway for at least 12 hours.

(3) The official does not know of a refusal or contrary indication by the decedent or objection by a person having priority to act as listed in subdivision (a) of Section 7151.

(4) The removal will be by a physician, surgeon, or technician; but in the case of eyes, by one of them or by an enucleator.

(5) The removal will not interfere with any autopsy or investigation.

(6) The removal will be in accordance with accepted medical standards.

(7) Cosmetic restoration will be done, if appropriate.

(b) Except as provided in Section 7152, if the body is not within the custody of the coroner or medical examiner, a hospital may release and permit the removal of a part from a body if the hospital, after a reasonable effort has been made to locate and inform persons listed in subdivision (a) of Section 7151 of their option to make, or object to making, an anatomical gift, determines and certifies that the persons are not available. A search for the persons listed in subdivision (a) of Section 7151 may be initiated in anticipation of death, but, except in the case where the useful life of the part does not permit, the determination may not be made until the search has been underway for at least 12 hours. The search shall include a check of local police missing persons records, examination of personal effects, and the questioning of any persons visiting the decedent before his or her death or in the hospital, accompanying the decedent's body, or reporting the death, in order to obtain information that might lead to the location of any persons listed in subdivision (a) of Section 7151.

(c) Except as provided in Section 7152, if the body is not within the custody of the coroner or medical examiner or a hospital, the local public health officer may release and permit the removal of any part from a body in the local public health officer's custody for transplantation, therapy, or reconditioning if the requirements of subdivision (a) are met.

(d) An official or hospital releasing and permitting the removal of a part shall maintain a permanent record of the name of the decedent, the person making the request, the date and purpose of the

request, the part requested, any required written or recorded telephonic consent, and the person to whom it was released.

(e) In the case of corneal material to be used for the purpose of transplantation, the official releasing and permitting the removal of the corneal material and the requesting entity shall obtain and keep on file for not less than three years a copy of any one of the following:

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

(2) Proof of the existence of a recorded telephonic consent by the donor or any person specified in Section 7151 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.

(3) A document recording a verbal telephonic consent by the donor or any other person specified in Section 7151, 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.

These requirements are necessary only if the official agency chooses to participate in the transfer of corneal tissue with the requesting entity.

(f) Neither the coroner nor medical examiner authorizing the removal of a body part or 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 a body part or 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 body part or tissue, nor be subject to criminal prosecution for the removal of the body part or tissue pursuant to this section.

SEC. 4. Section 1672.3 is added to the Vehicle Code, to read:

1672.3. (a) The director shall determine the date when the department's inventory of driver's license and identification card forms, as that inventory exists in accordance with the law in effect on December 31, 1998, has been depleted.

(b) The director shall make written notification of the date determined under subdivision (a) to the following persons:

(1) The Secretary of State.

(2) The Chair of the Senate Committee on Transportation.

(3) The Chair of the Assembly Committee on Transportation.

(c) The written notice required under subdivision (b) shall state that it is being submitted in accordance with this section.

SEC. 5. Section 1672.5 is added to the Vehicle Code, to read:

1672.5. For purposes of providing a means of identifying persons who have elected to make an anatomical gift under the Uniform Anatomical Gift Act (Chapter 3.5 (commencing with Section 7150)

of Part 1 of Division 7 of the Health and Safety Code), the department shall design the driver's licenses and identification cards in order that a sticker may be affixed to the licenses and cards. The sticker shall indicate a person's willingness to make an anatomical gift, and shall be affixed with a substance that is resistant to any unintentional removal.

SEC. 6. Section 12811 of the Vehicle Code is amended to read:

12811. (a) (1) When the department determines that the applicant is lawfully entitled to a license, it shall issue to the person a driver's license as applied for. The license shall state the class of license for which the licensee has qualified and shall contain the distinguishing number assigned to the applicant, the date of expiration, the name, age, and mailing address of the licensee, a brief description and engraved picture or photograph of the licensee for the purpose of identification, and space for the signature of the licensee.

Each license shall also contain a space for the endorsement of a record of each suspension or revocation thereof.

The department shall use whatever process or processes, in the issuance of engraved or colored licenses, that prohibit, as near as possible, the ability to alter or reproduce the license, or prohibit the ability to superimpose a picture or photograph on the license without ready detection.

(2) In addition to the requirements of paragraph (1), a license issued to a person under 18 years of age shall display the words "provisional until age 18."

(b) The department shall provide a form which may be carried with the license by which the licensee may indicate his or her willingness and intent to make an anatomical gift or his or her refusal to make an anatomical gift pursuant to Section 7150.5 of the Health and Safety Code and the date that a pacemaker has been implanted. The department shall present this form, and explain its use, to each applicant for a license, or for the renewal of a license, at the time of the application. The form provided shall contain a statement sufficient in its terms to meet the requirements of the Uniform Anatomical Gift Act (Chapter 3.5 (commencing with Section 7150) of Part 1 of Division 7 of the Health and Safety Code). To be effective, the statement shall be signed by the licensee who shall be at least 18 years of age. If the licensee cannot sign, the statement may be signed for the licensee at his or her direction and in his or her presence in the presence of two witnesses who shall sign the statement in his or her presence. The gift shall become effective upon the death of the licensee.

(c) No public entity or employee is liable for any loss, detriment, or injury resulting directly or indirectly from false or inaccurate information contained in the sticker provided pursuant to subdivision (b).

(d) No contract shall be let to any nongovernmental entity for the processing of drivers' licenses, unless the department receives two or more qualified bids from independent, responsible bidders.

(e) This section shall remain in effect only until the date determined under subdivision (a) of Section 1672.3, and as of that date is repealed, unless a later enacted statute, that is enacted on or before that date, deletes or extends that date.

SEC. 7. Section 12811 is added to the Vehicle Code, to read:

12811. (a) (1) When the department determines that the applicant is lawfully entitled to a license, it shall issue to the person a driver's license as applied for. The license shall state the class of license for which the licensee has qualified and shall contain the distinguishing number assigned to the applicant, the date of expiration, the name, age, and mailing address of the licensee, a brief description and engraved picture or photograph of the licensee for the purpose of identification, and space for the signature of the licensee.

Each license shall also contain a space for the endorsement of a record of each suspension or revocation thereof.

The department shall use whatever process or processes, in the issuance of engraved or colored licenses, that prohibit, as near as possible, the ability to alter or reproduce the license, or prohibit the ability to superimpose a picture or photograph on the license without ready detection.

(2) In addition to the requirements of paragraph (1), a license issued to a person under 18 years of age shall display the words "provisional until age 18."

(b) The department shall provide a form that, when completed, may be carried with the license, by which the licensee may indicate his or her willingness and intent to make an anatomical gift or his or her refusal to make an anatomical gift pursuant to Section 7150.5 of the Health and Safety Code, or the date that a pacemaker was implanted. The form shall be designed to obtain information sufficient to identify the nature of the anatomical gift and shall include, but not be limited to, all of the following:

(1) A space for the signature of the potential donor.

(2) A space for the signature of one or more witnesses, which should include the spouse, parent, or adult child of the donor or any other next of kin.

(3) A statement sufficient in its terms to meet the requirements of the Uniform Anatomical Gift Act (Chapter 3.5 (commencing with Section 7150) of Part 1 of Division 7 of the Health and Safety Code).

(4) A space for the donor to indicate whether the donor desires to donate tissues or organs, or both, or the donor's entire body for the purpose of transplantation or medical research, or both.

(5) Text informing the donor that the form is a legally binding document, which shall remain binding after death despite any expressed desires of next of kin opposed to the donation.

(6) Text requiring the donor to discuss the decision to donate with family, friends, or any other person who might be directly affected by the donation, particularly those next of kin who might object to the decision and a space for the donor's initials to acknowledge that it is the donor's responsibility to comply with this requirement.

(7) Text informing the donor that rescission of the decision to donate shall require the completion of a new form and the removal of the sticker described in Section 1672.5 from the driver's license or identification card.

(c) (1) The statement required under paragraph (3) of subdivision (b) shall not be deemed to be effective unless both of the following conditions have been met:

(A) The statement is signed by the licensee.

(B) The licensee is 18 years of age or older at the time of signing.

(2) If the licensee cannot sign, the statement may be signed for the licensee, at his or her direction and in his or her presence, in the presence of two witnesses who shall sign the statement in his or her presence.

(d) The department shall present the form provided under subdivision (b), and explain its use, to each applicant for a license or license renewal.

(e) The anatomical gift shall become effective upon the death of the licensee.

(f) No public entity or employee is liable for any loss, detriment, or injury resulting directly or indirectly from false or inaccurate information contained in the form provided pursuant to subdivision (b).

(g) No contract may be let to any nongovernmental entity for the processing of driver's licenses, unless the department receives two or more qualified bids from independent, responsible bidders.

(h) This section shall become operative on the date determined under subdivision (a) of Section 1672.3.

SEC. 8. Section 13005 of the Vehicle Code is amended to read:

13005. (a) The identification card shall resemble in appearance, so far as is practicable, a driver's license issued pursuant to this code. It shall adequately describe the applicant, bear his or her picture, and be produced in color or engraved by a process or processes that prohibit as near as possible, the ability to alter or reproduce the identification card, or prohibit the ability to superimpose a picture or photograph on the identification card without ready detection.

(b) With every identification card, the department shall provide a form which may be carried with the identification card by which the cardholder may indicate his or her willingness and intent to make an anatomical gift or his or her refusal to make an anatomical gift pursuant to Section 7150.5 of the Health and Safety Code and the date the pacemaker has been implanted. The department shall present this form, and explain its use, to each applicant for an identification card, or for the renewal of an identification card, at the time of the

application. The form provided shall contain a statement sufficient in its terms to meet the requirements of the Uniform Anatomical Gift Act (Chapter 3.5 (commencing with Section 7150) of Part 1 of Division 7 of the Health and Safety Code). To be effective, the statement shall be signed by the holder of the card, who shall be at least 18 years of age. If the holder of the card cannot sign, the statement may be signed for the cardholder at his or her direction and in his or her presence in the presence of two witnesses who shall sign the statement in his or her presence. The gift shall become effective upon the death of the holder of the card.

(c) No contract shall be let to any nongovernmental entity for the processing of identification cards unless the department receives two or more qualified bids from independent, responsible bidders.

(d) This section shall remain in effect only until the date determined under subdivision (a) of Section 1672.3, and as of that date is repealed, unless a later enacted statute, which is enacted on or before that date, deletes or extends that date.

SEC. 9. Section 13005 is added to the Vehicle Code, to read:

13005. (a) The identification card shall resemble in appearance, so far as is practicable, a driver's license issued pursuant to this code. It shall adequately describe the applicant, bear his or her picture, and be produced in color or engraved by a process or processes that prohibit as near as possible, the ability to alter or reproduce the identification card, or prohibit the ability to superimpose a picture or photograph on the identification card without ready detection.

(b) With every identification card, the department shall provide the form described in subdivisions (b) and (c) of Section 12811. The form may be carried with the identification card and may be used by the cardholder to indicate his or her willingness and intent to make an anatomical gift, his or her refusal to make an anatomical gift pursuant to Section 7150.5 of the Health and Safety Code, or the date that a pacemaker was implanted. The department shall present this form, and explain its use, to each applicant for an identification card or identification card renewal.

(c) The anatomical gift shall become effective upon the death of the holder of the card.

(d) No contract may be let to any nongovernmental entity for the processing of identification cards unless the department receives two or more qualified bids from independent, responsible bidders.

(e) This section shall become operative on the date determined under subdivision (a) of Section 1672.3.

CHAPTER 888

An act to add and repeal Section 10759.5 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor September 26, 1998. Filed with Secretary of State September 28, 1998.]

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

SECTION 1. The Legislature finds and declares:

(a) There is a wide disparity on some state and local taxes and fees levied on owners of vehicles operated on alternative fuels when compared to those same taxes and fees levied on owners of comparable conventional fuel vehicles.

(b) In some cases, the taxes and fees on alternative fuel vehicles are more than twice as much as those for conventional fuel vehicles.

(c) The disparity in taxes and fees exists even though the alternative fuel vehicle may look identical to the conventional fuel vehicle and provide the same or lesser utility to the individual owner.

(d) The existing California vehicle license fee and state and local sales and use taxes on the sale or lease of motor vehicles that operate on alternative fuels are higher than for comparable conventional fuel vehicles because alternative fuel vehicles generally have higher sales prices. The higher sales prices are largely due to the fact that these vehicles are produced in extremely low volumes (many assembled by hand), such that their production has not achieved the economies of scale that would significantly reduce their cost; and they use many new advanced materials and technologies that also have not yet achieved economies of scale, and therefore have a temporarily greater cost to consumers.

(e) The higher sales prices for these alternative fuel vehicles are expected to be a short-term, temporary situation because prices are expected to decline significantly to competitive levels as volume increases. If this does not occur, these vehicles may never be competitive, and automakers would likely withdraw them from the market. The current vehicle license fee mechanism, and sales and use tax system, do not reflect these temporary, short-term pricing situations. Instead they intrinsically, but incorrectly, assume that these short-term higher prices reflect true long-term market value of the vehicles.

(f) Alternative fuel vehicles provide benefits to California citizens that are external to, or not reflected in, their cost to the purchaser. These benefits include: increasing our national independence from foreign energy sources; providing more transportation choices for consumers and businesses, thus reducing our economic vulnerability to sudden fuel price increases caused by external or internal events;

reducing air pollution from mobile sources; reducing future pressures for additional environmental controls on existing and new businesses and industries in California; and creating new advanced transportation technology jobs and industries in California.

(g) It is the public policy of the State of California, the federal government, and many local governments, to encourage the development and use of alternative fuel vehicles, for the purpose of providing the benefits described above to all California citizens.

(h) Existing vehicle license fee structures, and the existing sales and use tax system, as they relate to the determination of market value of alternative fuel vehicles do not reflect the critical short-term pricing issues described above, nor the external benefits that accrue to all California citizens. Additionally, these existing fees and taxes act as a significant disincentive to potential purchasers of alternative fuel vehicles, and as such, are contrary to existing public policies at all levels of government.

(i) It is the intent of the Legislature to equalize the vehicle license fee, and state and local sales and use taxes, between alternative fuel vehicles and conventional fuel vehicles for a period of four years, beginning January 1, 1999, and ending December 31, 2002. During this time period it is the intent of the Legislature that the incremental or differential cost between an alternative fuel vehicle and a comparable conventional fuel vehicle, as determined by the State Energy Resources Conservation and Development Commission, should be exempt from both the vehicle license fee, and state and local sales and use taxes.

(j) To ensure that the alternative fuel vehicles subject to these provisions provide significant reduction in air pollution, eligible vehicles must meet, at a minimum, the standard for ultra-low-emission vehicles as determined by the State Air Resources Board.

SEC. 2. Section 10759.5 is added to the Revenue and Taxation Code, to read:

10759.5. (a) For purposes of determining the vehicle license fee imposed by this part, there are exempted from the determination of market value, the incremental costs of new light-duty motor vehicles propelled by alternative fuels, and certified by the State Air Resources Board as producing emissions that meet the emission standard for ultra-low-emission vehicles or lower as defined by the board. This exemption shall apply to the subsequent payments of the vehicle license fee.

(b) For purposes of this section, "incremental cost" means the amount determined by the State Energy Resources Conservation and Development Commission as the reasonable difference between the cost of the motor vehicle defined in subdivision (a) and the cost of a comparable gasoline or diesel fuel vehicle. This determination shall constitute the maximum incremental cost for purposes of the exemption in subdivision (a), and may be reduced by the actual sales

price of the vehicle. The actual incremental cost shall be stated in the contract for sale or lease with the purchaser, and shall be reported to the commission quarterly.

(c) This section shall become operative on January 1, 1999, and shall remain in effect only until January 1, 2003, and as of that date is repealed.

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 889

An act to amend Section 50474 of, and to add Section 50474.1 to, the Government Code, and to add Section 57.5 to the San Diego Unified Port District Act (Chapter 67 of the Statutes of 1962, First Extraordinary Session), relating to airports.

[Approved by Governor September 26, 1998. Filed with Secretary of State September 28, 1998.]

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

SECTION 1. Section 50474 of the Government Code is amended to read:

50474. In connection with the erection, improvement, expansion, or maintenance of such airports or facilities, a local agency may:

(a) Regulate the receipt, deposit, and removal, and the embarkation or debarkation of passengers or property to and from such landing places or moorage.

(b) Exact charges, fees, and tolls, and enforce liens for their payment.

(c) Lease or assign for operation any space and any necessary or useful appurtenances, appliances, or other conveniences.

(d) Own and operate aircraft.

(e) Employ pilots.

(f) Regulate the use of the airport and facilities and other property or means of transportation within or over the airport.

(g) Perform any duties necessary or convenient for the regulation of air traffic.

(h) Enter into contracts or otherwise cooperate with the federal government or other public or private agencies.

(i) Exercise powers necessary or convenient in the promotion of aeronautics and commerce and navigation by air.

SEC. 2. Section 50474.1 is added to the Government Code, to read:

50474.1. (a) An airport operated by a city and county may require a rental car company, in writing, to collect a fee from its customers on behalf of the airport for the use of an airport-mandated

common use busing system or light rail transit system operated for the movement of passengers between the terminal and a consolidated on-airport rental car facility. If a rental car company is required pursuant to this section to collect a fee, the following conditions shall apply:

(1) The fees shall be calculated on a per contract basis.

(2) All fees collected for this purpose constitute debts owed to the airport by the collecting party. The debts are due and payable to the airport quarterly or at any other interval the airport may establish to facilitate collection and insure payment.

(3) The fee is a user fee, not a tax.

(4) Revenues collected from the fee may not exceed the reasonable costs of providing the busing and light rail transit service and may not be used for any other purpose.

(b) Notwithstanding any other provision of law, including, but not limited to, Section 1936 of the Civil Code, a rental car company that is required to collect fees under this section shall do all of the following:

(1) Collect the fee from those of its customers subject to the fee as required in subdivision (a).

(2) Clearly disclose the existence of the fee in any radio, television, or print advertisement that states a rental rate applicable to an airport at which the fee is to be imposed, and the amount of the fee at the airport where it is imposed, or a range of fees if the fee is imposed at more than one airport.

(3) Clearly disclose the existence of the fee in a telephonic, in-person, or computer-transmitted quotation that states a rental rate applicable to an airport at which the fee is to be imposed and the amount of the fee at the airport where it is imposed.

(4) Separately identify the fee on its rental agreement.

SEC. 3. Section 57.5 is added to the San Diego Unified Port District Act (Chapter 67 of the Statutes of 1962, First Extraordinary Session), to read:

Sec. 57.5. (a) If the district requires any transportation vendor conducting business on district tidelands, including San Diego International Airport, Lindbergh Field, or the airport, in writing, to collect a fee from its customers on behalf of the district for financing a parking structure that is located on district-owned property and adjacent to and intended principally to serve a convention center, all of the following shall apply:

(1) The fees shall be calculated on a per transaction basis.

(2) All fees collected for this purpose constitute debts owed to the district by the collecting party. The debts are due and payable to the district quarterly or at any other interval the district may establish to facilitate collection and ensure payment.

(3) The fee is a transaction fee, not a tax.

(4) Revenues collected from the fee may not exceed the reasonable costs of financing the construction of the parking structure and may not be used for any other purpose.

(5) For purposes of this section, a rental car company shall be deemed to be conducting business on district tidelands if it has a business location on district tidelands or it picks up customers at a location on district tidelands.

(b) If the vendor required to collect a fee pursuant to subdivision (a) is a rental car company, then, notwithstanding any other provision of law, including, but not limited to, Section 1936 of the Civil Code, the rental car company shall do all of the following:

(1) Collect the fee only as permitted by this section.

(2) Clearly disclose the existence of the fee in any radio, television, or print advertisement that states a rental rate applicable to the location at which the fee is to be imposed, and the amount of the fee at the location where it is imposed, or a range of fees if the fee is imposed at more than one location.

(3) Clearly disclose the existence of the fee in a telephonic, in-person, or computer-transmitted quotation that states a rental rate applicable to a location at which the fee is to be imposed and the amount of the fee at the location where it is imposed.

(4) Separately identify the fee on its rental agreement.

(c) If a rental car company conducting business on district tidelands operates a facility not located on district tidelands, then, the rental car company shall be subject to all provisions of subdivisions (a) and (b), but shall collect the fee only from those customers of that facility who do either of the following:

(1) Are picked up from a location on district tidelands, including the airport, and are transported to the rental car company's business facility via a courtesy ground transportation vehicle for the purpose of entering into a car rental agreement or securing a rental vehicle.

(2) Enter into a car rental agreement with the rental car company within 24 hours of arrival at the airport and rental car arrangements or reservations were made using a telephone located at an airport information board by such customers.

(d) In the event that the Federal Aviation Administration makes a determination that the provisions of this section are in conflict with federal law requiring a nexus to airport operations, the provisions of this section shall be inoperative.

SEC. 4. If any section of this act, or the applicability thereof to any person or circumstances, is for any reason held invalid, the validity of the remainder of the act, or the application of that provision to other persons or circumstances, shall not be affected thereby. The Legislature hereby declares that it would have passed this act, and each section thereof, irrespective of the fact that one or more sections

or the application thereof to any person or circumstance, be held invalid.

CHAPTER 890

An act to amend Section 7273 of the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 26, 1998. Filed with Secretary of State September 28, 1998.]

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

SECTION 1. 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, by June 1 of each year, notify districts 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 that 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.

(e) For the 1998–99 fiscal year and each fiscal year thereafter, the amount charged to a district by the board shall not exceed the lesser of the percentage the board would have charged for the 1998–99 fiscal year under this section as it read prior to the amendments made by the act adding this subdivision, or the following percentages of the total transactions and use tax revenue collected by the board for that district for each fiscal year:

(1) For districts imposing a transactions and use tax of one-half of 1 percent or greater, the amount charged by the board shall not exceed 1.5 percent, for the 1998–99 fiscal year and each fiscal year thereafter.

(2) Beginning with the 1998–99 fiscal year and in each fiscal year thereafter, the amount charged to a district imposing a transactions and use tax of one-quarter of 1 percent shall not exceed 3 percent.

(3) Beginning with the 1998–99 fiscal year and in each fiscal year thereafter, the amount charged to a district imposing a transactions and use tax of one-eighth of 1 percent shall not exceed 5 percent.

(f) The board shall report to the Chairperson of the Senate Committee on Budget and Fiscal Review and the Chairperson of the Assembly Committee on Budget by March 1, 1998, and January 1, 1999, on the actions the board will take to adjust its costs commensurate with the changes in reimbursements effected by this bill. The report shall analyze the impact of the reduced reimbursements on the board's budget and how the board's actions may impact its revenue-producing activities. The board may not reduce positions that are responsible for the generation or receipt of revenues, including, but not limited to, positions in the audits and compliance programs.

CHAPTER 891

An act to add Article 5.5 (commencing with Section 124010) to Chapter 3 of Part 2 of Division 106 of the Health and Safety Code, relating to human services, and making an appropriation therefor.

[Approved by Governor September 27, 1998. Filed with Secretary of State September 28, 1998.]

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

SECTION 1. Article 5.5 (commencing with Section 124010) is added to Chapter 3 of Part 2 of Division 106 of the Health and Safety Code, to read:

Article 5.5. Assistance To Children At Home Demonstration Project

124010. (a) It is the intent of the Legislature to establish a demonstration project to assist medically fragile children.

(b) It is further the intent of the Legislature that this demonstration project serve as a model for the provision of care management for medically fragile children.

(c) The Legislature finds and declares that the use of care management services under this demonstration project will lead to savings in medical costs through reduced emergency room visits and hospital admissions.

124011. There is hereby established a demonstration project to provide comprehensive care for, and reduce avoidable health problems of, chronically, seriously ill children. The demonstration project shall operate for a period of one year.

124012. (a) The department shall award funding appropriated for purposes of this article for related service costs of the demonstration project, including the costs of home visits by a nurse practitioner.

(b) Any private nonprofit children's hospital that meets all of the following requirements shall qualify for funding under the project, as described in this section:

(1) The hospital is a children's hospital, as defined in Section 10727 of the Welfare and Institutions Code.

(2) The hospital is located in a major urban center in a multiplan pilot project county, as established pursuant to Section 14089.05 of the Welfare and Institutions Code.

(3) The hospital has experience in the implementation of innovative care management programs with a focus on prevention, as described in Section 16525.5 of the Welfare and Institutions Code.

124013. The demonstration project shall provide care management services to children enrolled in the demonstration project pursuant to a proposal accepted by the department.

124014. In order to most effectively assist children enrolled in the demonstration project, the demonstration project shall employ the use of clinic visits, home visits, school visits, inpatient visits, and multidisciplinary conferences.

124015. (a) The children's hospital receiving funding under this article shall submit a report to the department that evaluates the demonstration project and includes measures of medical costs and improved health outcomes of enrollees.

(b) The report shall address the following outcome measures: decreased absenteeism from school, avoided emergency room visits, avoided hospitalizations and hospital days, and an increased number of children with up-to-date immunizations.

(c) The report required by subdivision (a) shall include a determination as to whether the demonstration project is deemed to be successful. The demonstration project shall be deemed to be successful if all of the following have occurred:

(1) The average number of school days missed is decreased by 50 percent.

(2) The average number of emergency room visits is decreased by 50 percent.

(3) The average number of hospitalizations and hospital days is decreased by 50 percent.

(4) The number of children with up-to-date immunizations is increased by 50 percent.

The determinations made pursuant to this subdivision shall be based on a comparison of the preprogram utilization rates, which is data collected one year prior to enrollment in the program, with the utilization rates one year after enrollment.

SEC. 2. There is hereby appropriated the sum of one hundred thousand dollars ($100,000) from the General Fund to the State Department of Health Services in order to implement this act.

CHAPTER 892

An act to add and repeal Section 14124.12 of the Welfare and Institutions Code, relating to healing arts.

[Approved by Governor September 27, 1998. Filed with Secretary of State September 28, 1998.]

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

SECTION 1. Section 14124.12 is added to the Welfare and Institutions Code, to read:

14124.12. (a) Upon receipt of written notice from the Medical Board of California, the Osteopathic Medical Board of California, or the Board of Dental Examiners of California, that a licensee's license has been placed on probation as a result of a disciplinary action, the department may not reimburse any Medi-Cal claim for the type of surgical service or invasive procedure that gave rise to the probation, including any dental surgery or invasive procedure, that was performed by the licensee on or after the effective date of probation and until the termination of all probationary terms and conditions or until the probationary period has ended, whichever occurs first. This section shall apply except in any case in which the relevant licensing

board determines that compelling circumstances warrant the continued reimbursement during the probationary period of any Medi-Cal claim, including any claim for dental services, as so described. In such a case, the department shall continue to reimburse the licensee for all procedures, except for those invasive or surgical procedures for which the licensee was placed on probation.

(b) The Medical Board of California, the Osteopathic Medical Board of California, and the Board of Dental Examiners of California, shall work in conjunction with the State Department of Health Services to provide all information that is necessary to implement this section. These boards and the department shall annually report to the Legislature by no later than March 1 that number of licensees of these boards, placed on probation during the immediately preceding calendar year, who are:

(1) Not receiving Medi-Cal reimbursement for certain surgical services or invasive procedures, including dental surgeries or invasive procedures, as a result of subdivision (a).

(2) Continuing to receive Medi-Cal reimbursement for certain surgical or invasive procedures, including dental surgeries or invasive procedures, as a result of a determination of compelling circumstances made in accordance with subdivision (a).

(c) This section shall become inoperative on July 1, 2003, and, as of January 1, 2004, is repealed, unless a later enacted statute that is enacted before January 1, 2004, deletes or extends the dates on which it becomes inoperative and is repealed.

CHAPTER 893

An act to add Section 1367.02 to the Health and Safety Code, and to add Section 10123.36 to the Insurance Code, relating to health care coverage.

[Approved by Governor September 27, 1998. Filed with Secretary of State September 28, 1998.]

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

SECTION 1. Section 1367.02 is added to the Health and Safety Code, to read:

1367.02. (a) On or before July 1, 1999, for purposes of public disclosure, every health care service plan shall file with the department a description of any policies and procedures related to economic profiling utilized by the plan and its medical groups and individual practice associations. The filing shall describe how these policies and procedures are used in utilization review, peer review, incentive and penalty programs, and in provider retention and termination decisions. The filing shall also indicate in what manner,

if any, the economic profiling system being used takes into consideration risk adjustments that reflect case mix, type and severity of patient illness, age of patients, and other enrollee characteristics that may account for higher or lower than expected costs or utilization of services. The filing shall also indicate how the economic profiling activities avoid being in conflict with subdivision (g) of Section 1367, which requires each plan to demonstrate that medical decisions are rendered by qualified medical providers, unhindered by fiscal and administrative management. Any changes to the policies and procedures shall be filed with the commissioner pursuant to Section 1352. Nothing in this section shall be construed to restrict or impair the department, in its discretion, from utilizing the information filed pursuant to this section for purposes of ensuring compliance with this chapter.

(b) The commissioner shall make each plan's filing available to the public upon request. The commissioner shall not publicly disclose any information submitted pursuant to this section that is determined by the commissioner to be confidential pursuant to state law.

(c) Each plan that uses economic profiling shall, upon request, provide a copy of economic profiling information related to an individual provider, contracting medical group, or individual practice association to the profiled individual, group, or association. In addition, each plan shall require as a condition of contract that its medical groups and individual practice associations that maintain economic profiles of individual providers shall, upon request, provide a copy of individual economic profiling information to the individual providers who are profiled. The economic profiling information provided pursuant to this section shall be provided upon request until 60 days after the date upon which the contract between the plan and the individual provider, medical group, or individual practice association terminates, or until 60 days after the date the contract between the medical group or individual practice association and the individual provider terminates, whichever is applicable.

(d) For the purposes of this article, "economic profiling" shall mean any evaluation of a particular physician, provider, medical group, or individual practice association based in whole or in part on the economic costs or utilization of services associated with medical care provided or authorized by the physician, provider, medical group, or individual practice association.

SEC. 2. Section 10123.36 is added to the Insurance Code, to read:

10123.36. (a) On or before July 1, 1999, for purposes of public disclosure, every disability insurer that covers hospital, medical, or surgical expenses, and authorizes insureds to select providers who have contracted with the insurer for alternative rates of payment as described in Section 10133, and the disability insurer or any of its contracting providers or provider groups utilize economic profiling related to services provided to insureds, shall file with the department a description of any policies and procedures related to

economic profiling utilized by the insurer and any of its contracting providers and provider groups. The filing shall describe how these policies and procedures are used in utilization review, peer review, incentive and penalty programs, and in provider retention and termination decisions. The filing shall also indicate in what manner, if any, the economic profiling system being used takes into consideration risk adjustments that reflect case mix, type and severity of patient illness, age of patients, and other policyholder characteristics that may account for higher or lower than expected costs or utilization of services. Any changes to the policies and procedures shall be filed expeditiously with the commissioner. Nothing in this section shall be construed to restrict or impair the department, in its discretion, from utilizing the information filed pursuant to this section for purposes of ensuring compliance with this chapter.

(b) The commissioner shall make each disability insurer filing available to the public upon request. The commissioner shall not publicly disclose any information submitted pursuant to this section that is determined by the commissioner to be confidential pursuant to state law.

(c) Each disability insurer that uses economic profiling shall, upon request, provide a copy of economic profiling information related to a contracting provider or provider group to the profiled provider or group. In addition, each disability insurer shall require as a condition of contract that its contracting provider groups that maintain economic profiles of individual providers who may be selected by insureds shall, upon request, provide a copy of individual economic profiling information to individual providers who are profiled. The economic profiling information provided pursuant to this section shall be provided upon request until 60 days after the date upon which the contract between the insurer and the individual provider or provider group terminates, or until 60 days after the date the contract between the provider group and the individual provider terminates, whichever is applicable.

(d) For the purposes of this section, "economic profiling" shall mean any evaluation of a particular physician, provider, or provider group based in whole or in part on the economic costs or utilization of services associated with medical care provided or authorized by the physician, provider, or provider group.

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 894

An act to amend Section 14087.325 of the Welfare and Institutions Code, relating to public social services.

[Approved by Governor September 27, 1998. Filed with Secretary of State September 28, 1998.]

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

SECTION 1. The Legislature finds and declares all of the following:

(a) There are over 250 federally qualified health centers, federally qualified health center look-alikes, and rural health clinics in California that are licensed by the state.

(b) These health centers and clinics care for uninsured and underinsured people who would otherwise not have access to care, by providing quality, cost-effective, community-based primary and specialty health care, and dental and vision services, with an emphasis on cultural sensitivity and linguistic appropriateness.

(c) Collectively, federally qualified health centers and rural health clinics serve over 1.3 million patients.

(d) The State Department of Health Services has committed to enrolling children who are Medi-Cal beneficiaries and their families into managed care plans.

(e) In response to the implementation of managed care, federally qualified health centers and rural health clinics have begun developing internal systems and building capacity to manage costs and patient lives in a capitated environment.

SEC. 2. Section 14087.325 of the Welfare and Institutions Code is amended to read:

14087.325. (a) The department shall require, as a condition of obtaining a contract with the department, that any local initiative, as defined in subdivision (v) of Section 53810 of Title 22 of the California Code of Regulations, offer a subcontract to any entity defined in Section 1396d (*l*)(2)(B) of Title 42 of the United States Code providing services as defined in Section 1396d(a)(2)(C) of Title 42 of the United States Code and operating in the service area covered by the local initiative's contract with the department. These entities are also known as federally qualified health centers.

(b) Except as otherwise provided in this section, managed care subcontracts offered to a federally qualified health center or a rural

health clinic, as defined in Section 1396d (*l*)(1) of Title 42 of the United States Code, by a local initiative, county organized health system, as defined in Section 12693.05 of the Insurance Code, commercial plan, as defined in subdivision (h) of Section 53810 of Title 22 of the California Code of Regulations, or a health plan contracting with a geographic managed care program, as defined in subdivision (g) of Section 53902 of Title 22 of the California Code of Regulations, shall be on the same terms and conditions offered to other subcontractors providing a similar scope of service.

(c) The department shall provide incentives in the competitive application process described in paragraph (1) of subdivision (b) of Section 53800 of Title 22 of the California Code of Regulations, to encourage potential commercial plans as defined in subdivision (h) of Section 53810 of Title 22 of the California Code of Regulations to offer subcontracts to these federally qualified health centers.

(d) Reimbursement to federally qualified health centers and rural health centers for services provided pursuant to a subcontract with a local initiative, a commercial plan, geographic managed care program health plan, or a county organized health system, shall be paid in a manner that is not less than the level and amount of payment that the plan would make for the same scope of services if the services were furnished by a provider that is not a federally qualified health center or rural health clinic.

(e) (1) The department shall administer a program to ensure that total payments to federally qualified health centers and rural health clinics operating as managed care subcontractors pursuant to subdivision (d) comply with applicable federal law regarding reasonable cost reimbursement for services provided by these entities pursuant to Sections 1902(a)(13)(C) and 1903(m)(2)(A)(ix) of the Social Security Act (42 U.S.C.A. Secs. 1396a(a)(13)(C) and 1396b(m)(2)(A)(ix)). Under the department's program, federally qualified health centers and rural health clinics subcontracting with local initiatives, commercial plans, county organized health systems, and geographic managed care program health plans shall seek supplemental reimbursement from the department through a per visit fee-for-service billing system utilizing the state's Medi-Cal fee-for-service claims processing system contractor. To carry out this per visit payment process, each federally qualified health system and rural health clinic shall submit to the department for approval a rate differential calculated to reflect the amount necessary to reimburse the federally qualified health center or rural health clinic the difference between the payment the center or clinic received from the managed care health plan and the interim rate established by the department based on the center's or clinic's reasonable cost. The department shall adjust the computed rate differential as it deems necessary to minimize the difference between the center's or clinic's revenue from the plan and the center's or clinic's cost-based reimbursement.

(2) In addition, to the extent feasible, within six months of the end of the center's or clinic's fiscal year, the department shall perform an annual reconciliation to reasonable cost, and make payments to, or obtain a recovery from, the center or clinic.

(f) In calculating the capitation rates to be paid to local initiatives, commercial plans, geographic managed care program health plans, and county organized health systems, the department shall not include the additional dollar amount applicable to cost-based reimbursement that would otherwise be paid, absent cost-based reimbursement, to federally qualified health centers and rural health clinics in the Medi-Cal fee-for-service program.

(g) (1) A federally qualified health center or rural health clinic may voluntarily agree to enter into a capitated or other at-risk contract with a managed care program health plan if the clinic agrees to all of the following:

(A) Reimbursement by the health plan under the contract is payment in full for the services provided under the contract and the costs and revenues experienced by the clinic under the contract shall not be subjected to reconciliation to reasonable cost.

(B) The clinic shall not seek supplemental reimbursement from the department, as provided in paragraph (1) of subdivision (e), or seek reconciliation to reasonable cost with the department, as provided in paragraph (2) of subdivision (e).

(2) The existence of a contract specified in paragraph (1) shall not void the center's or clinic's right to reconciliation to reasonable cost for those services that are not part of the center's or clinic's capitated or other at-risk contract with a health plan.

(3) A federally qualified health center or rural health clinic that agrees to enter into a capitated or at-risk contract shall, in writing to the department, affirmatively waive its right to supplemental reimbursement as provided in paragraph (1) of subdivision (e), and reconciliation to reasonable cost as provided in paragraph (2) of subdivision (e) for services provided pursuant to the subcontract with the health plan. Nothing in this paragraph shall restrict a center or clinic that waives its right to cost-based reimbursement from reinstating that right, in writing to the department, if the capitation or at-risk contract between the center or clinic and the health plan that prompted the waiver terminates.

(h) The department shall approve all contracts between federally qualified health centers or rural health clinics and any local initiative, commercial plan, geographic managed care program health plan, or county organized health system, in order to ensure compliance with this section.

(i) This section shall not preclude the department from establishing pilot programs pursuant to Section 14087.329.

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CHAPTER 895

An act to amend, repeal, and add Sections 13960, 13964, and 13965 of the Government Code, relating to victims of crimes, and making an appropriation therefor.

[Approved by Governor September 27, 1998. Filed with Secretary of State September 28, 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, 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, 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. 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.

(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. 1.1. 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, 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. 1.2. 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. 1.3. 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, 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 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.

(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. 1.4. 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. 2. 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 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 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 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 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. 2.7. 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. 3. Section 13965 of the Government Code is amended to read:

13965. (a) If the application for assistance is approved, the board shall determine what type of state assistance will best aid the victim or derivative victim. The board may take any or all of the following actions:

(1) Reimburse the following persons for the expense of their out-patient mental health counseling when that mental health counseling is necessary as a direct result of the crime:

(A) A victim in an amount not to exceed ten thousand dollars ($10,000).

(B) A derivative victim who is the surviving parent, sibling, child, spouse, or fiancé of a victim of a crime which directly resulted in the death of the victim in an amount not to exceed ten thousand dollars ($10,000).

(C) A derivative victim who is the primary caretaker of a minor victim of sexual or physical abuse whose claim is not denied or reduced pursuant to subdivision (b) or (d) of Section 13964 in a total amount not to exceed ten thousand dollars ($10,000) for not more than two derivative victims described in this subparagraph.

(D) A derivative victim not eligible for reimbursement pursuant to subparagraph (B) or (C) in an amount not to exceed three thousand dollars ($3,000).

(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 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 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 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. 3.5. 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. 3.7. 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 out-patient mental health counseling when that mental health counseling is necessary as a direct result of the crime:

(A) A victim in an amount not to exceed ten thousand dollars ($10,000).

(B) A derivative victim who is the surviving parent, sibling, child, spouse, or fiancé of a victim of a crime which directly resulted in the death of the victim in an amount not to exceed ten thousand dollars ($10,000).

(C) A derivative victim who is the primary caretaker of a minor victim of sexual or physical abuse whose claim is not denied or

reduced pursuant to subdivision (b) or (d) of Section 13964 in a total amount not to exceed ten thousand dollars ($10,000) for not more than two derivative victims described in this subparagraph.

(D) A derivative victim not eligible for reimbursement pursuant to subparagraph (B) or (C) in an amount not to exceed three thousand dollars ($3,000).

The board may authorize a direct cash payment to a provider of psychological or psychiatric treatment or mental health counseling services, including peer counseling services provided by a rape crisis center as defined by Section 13837 of the Penal Code or to either the victim or the derivative victim, equal to the pecuniary loss attributable to medical or medical-related expenses, including counseling, directly resulting from the injury. Reimbursement on the initial claim for any psychological, psychiatric, or mental health counseling services, including peer counseling services provided by a rape crisis center, shall, if the application has been approved, be paid by the board within 90 days of the date of receipt of the claim for payment, with subsequent payments to be made to the provider within one month of the receipt of a claim for payment. However, the board may not authorize without good cause a direct cash payment to a licensed health care provider or rape crisis center over the objection of the applicant.

When a public agency, including a court or district attorney or a police, county child protective services, or other state or local governmental agency, refers a victim of crime to a private nonprofit agency for treatment for that victim, the private nonprofit agency shall be reimbursed for those services at the level of the normal and customary fee charged by the private nonprofit agency to clients with adequate means of payment for its services, except that this reimbursement shall not exceed the maximum reimbursement rates set by the board and may be made only to the extent that the victim otherwise qualifies for services under the victims of crime program and that other reimbursement or direct subsidies are not available to serve the victim.

Payments authorized pursuant to this paragraph for peer counseling services provided by a rape counseling center shall not exceed fifteen dollars ($15) for each hour of services provided. Those services shall be limited to individual, in-person counseling on a face-to-face basis for a period not to exceed 10 weeks plus one series of facilitated support group counseling sessions.

(2) Authorize a cash payment to the victim equal to the pecuniary loss resulting from loss of wages directly resulting from the injury. Loss of wages shall not be paid by the board for more than two years following the crime. However, loss of wages may be extended for one additional year if the victim is either enrolled in a program of retraining or other rehabilitation approved by the board or has established to the satisfaction of the board that because of his or her disability arising from the crime he or she is unable to participate in

any retraining or rehabilitation. If the board determines, after review of an application for assistance, including the evaluation of a qualified provider, that pecuniary loss for which payment may be made under this paragraph is expected to continue more than six months after the date of approval of the victim's application for assistance, disbursement shall commence and continue on a monthly basis for the period of time pecuniary loss is expected to continue.

(3) Authorize a cash payment to a derivative victim described in subparagraphs (A) and (B) of paragraph (2) of subdivision (a) of Section 13960 who was legally dependent on the victim at the time of the crime for the loss of support incurred by that person as a direct result of the crime.

(A) Loss of support shall not be paid by the board for income lost by an adult for a period of more than two years and shall not extend more than three years following the date of the crime.

(B) Loss of support shall not be paid by the board on behalf of a minor for a period beyond the child's attaining the age of 18 years.

(C) The total amount payable to all derivative victims for loss of support pursuant to this paragraph as the result of one crime shall not exceed forty-six thousand dollars ($46,000).

(4) Authorize cash payments to or on behalf of the victim for job retraining or similar employment-oriented rehabilitative services.

(5) Obtain an independent examination and report from any provider of psychological or psychiatric treatment or mental health counseling services, if it believes there is a reasonable basis for requesting an additional evaluation. In cases where the crime involves sexual assault, the provider shall have expertise in the needs of sexual assault victims. In cases where the crime involves child abuse or molestation, the provider shall have expertise in the needs of victims of child abuse or molestation, as appropriate. When a reevaluation is obtained, payments shall not be discontinued prior to completion of the reevaluation.

(6) When a victim dies as a direct result of a crime, the board may reimburse any individual who voluntarily, and without anticipation of personal gain, pays or assumes the obligation to pay, the medical or burial expenses incurred as a direct result of the crime for the medical or burial expenses incurred in an amount not to exceed the rates or limitations established by the board.

(7) The total award to or on behalf of the victim or a derivative victim shall not exceed twenty-three thousand dollars ($23,000), and may be increased only in accordance with this section.

(8) In the event that the victim requests that the board give priority to reimbursement of loss of wages, the board shall not pay medical expenses or mental health counseling expenses except upon the request of the victim or after determining that payment of these expenses will not decrease the funds available to the victim for payment of loss of wages.

(9) The board may authorize a direct cash payment to a provider of services that are reimbursable pursuant to this article. However, the board may not, without good cause, authorize a direct cash payment to a provider over the objection of the victim or applicant.

(b) Assistance granted pursuant to this article shall not disqualify an otherwise eligible victim or derivative victim from participation in any other public assistance program.

(c) Cash payments made pursuant to this article may be on a one-time or periodic basis. If periodic, the board may increase, reduce, or terminate the amount of assistance according to the victim's or derivative victim's need, subject to the maximum limits provided in this section.

(d) The board shall pay attorney's fees representing the reasonable value of legal services rendered to the applicant, in an amount equal to 10 percent of the amount of the award, or five hundred dollars ($500), whichever is less for each victim and each derivative victim. An attorney receiving fees from another source may waive the right to receive fees under this section. Payments under this section shall be in addition to any amount authorized or ordered under subdivision (d) of Section 13969.1.

(e) No attorney shall charge, demand, receive, or collect any amount for services rendered in connection with any proceedings under this article except as awarded under this article.

(f) The maximum cash payments authorized in paragraph (7) of subdivision (a) shall be increased to forty-six thousand dollars ($46,000) if federal funds for those increases are available.

(g) Notwithstanding subdivisions (a) and (f), a victim injured between January 1, 1985, and December 31, 1985, shall be entitled to receive a maximum cash payment of forty-six thousand dollars ($46,000) if federal funds for these increases are available, but only for costs in excess of limitations provided for in subdivision (a) which are attributable to medical or medical-related expenses, except for psychological or psychiatric treatment, or mental health counseling services.

(h) Notwithstanding any conflicting provision of this chapter, the board may make additional payments for purposes described in paragraph (1) of subdivision (a) to any victim who filed an application with the board on or after December 1, 1982, who was a victim of a crime involving sexual assault, and who is a minor at the time the additional payments pursuant to this subdivision are made. The payments authorized by this subdivision shall not exceed the limits imposed by subdivisions (a) and (j).

(i) Reimbursement for any medical or medical-related services shall, if the victim's application has been approved, be paid by the board within an average of 90 days from receipt of the claim for payment. Payments to a medical or mental health provider under this subdivision or paragraph (1) of subdivision (a) shall not be discontinued prior to completion of any reevaluation. Whether or not

a reevaluation is obtained, if the board determines that payments to a provider shall be discontinued, the board shall notify the provider of their discontinuance within 30 days of its determination.

(j) The board may establish maximum rates and service limitations for reimbursement of medical and medical-related expenses, including counseling expenses, for which restitution is requested pursuant to this section. For mental health and counseling services, rates shall not exceed the statewide average. The adoption, amendment, and repeal of these maximum rates shall not be subject to the Administrative Procedure Act under Chapter 3.5 (commencing with Section 11340) of Part 1. An informational copy of the maximum rates shall be filed with the Secretary of State upon adoption by the board. A provider who accepts payment from the program for a service shall accept the program's rates as payment in full and shall not accept any payment on account of the service from any other source if the total of payments accepted would exceed the maximum rate set by the board for that service.

To assure service limitations which are uniform and appropriate to the levels of treatment required by the victim or derivative victim, the board may review all claims for these services as necessary to ensure their medical necessity. The board may further require additional documentation, information, or medical review of cases of continuing treatment which are projected to exceed five thousand dollars ($5,000) to determine the need to continue treatment in excess of that amount. The board may accept or reject claims for the amount in excess of five thousand dollars ($5,000) by applying the same standards applicable to processing the initial claim or may approve a continuing treatment regimen for a specific interval or subject to periodic review as appropriate. All information requested of the treating therapist shall be provided at no cost to the applicant, the board, or to local victim centers, pursuant to subdivision (b) of Section 13962. Requests for additional information shall be made in a timely manner so as not to interfere with necessary treatment.

(k) The authority provided by this section shall not be construed to in any way diminish, enhance, or otherwise affect any authority which the board may have under current law except as explicitly provided in this section.

(*l*) The board, in its discretion, may make payments directly to providers prior to verification.

(m) Notwithstanding paragraph (1) of subdivision (a), the board may reimburse a victim or derivative victim for mental health counseling in excess of that authorized by that paragraph if the claim is based on dire or exceptional circumstances that require more extensive treatment, as approved by the board.

(n) Notwithstanding paragraph (1) of subdivision (a), if, as of December 31, 1993, a person has incurred mental health counseling expenses pursuant to this article in excess of one-half of the amount specified in that subdivision, the board may award, in addition to

amounts awarded for previously incurred expenses, an amount equal to not more than one-half of the applicable maximum amount specified in that paragraph or any additional amounts as the board determines is necessary.

(o) The limitations on the amounts which the board may reimburse for loss of support and loss of wages pursuant to paragraphs (2) and (3) of subdivision (a) shall not apply to victims or derivative victims whose claims for loss of wages and loss of support had been approved prior to January 1, 1994.

(p) This section shall become operative on January 1, 2003.

SEC. 4. (a) Section 1.1 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 1803 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 1.1 of this bill shall become operative, and Sections 1, 1.2, and 1.3 of this bill shall not become operative.

(b) Section 1.2 of this bill incorporates amendments to Section 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, (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 1803, in which case Section 1.2 of this bill shall become operative, and Sections 1, 1.1, and 1.3 of this bill shall not become operative.

(c) Section 1.3 of this bill incorporates amendments to Section 13960 of the Government Code proposed by this bill, AB 535, and AB 1803. 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 535 and AB 1803, 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 1803, at which time Section 1.3 of this bill shall become operative, and Sections 1, 1.1, and 1.2 of this bill shall not become operative.

SEC. 5. Section 2.5 of this bill incorporates amendments to Section 13964 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 13964 of the Government Code, and (3) this bill is enacted after AB 535, in which case Section 13964 of the Government Code, as amended by AB 535, shall remain operative only until the operative date of this bill, at which time Section 2.5 of this bill shall

become operative, and Section 2 of this bill shall not become operative.

SEC. 6. Section 3.5 of this bill incorporates amendments to Section 13965 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 13965 of the Government Code, and (3) this bill is enacted after AB 535, in which case Section 13965 of the Government Code, as amended by AB 535, shall remain operative only until the operative date of this bill, at which time Section 3.5 of this bill shall become operative, and Section 3 of this bill shall not become operative.

CHAPTER 896

An act to add Section 14132.97 to the Welfare and Institutions Code, relating to human services, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 27, 1998. Filed with Secretary of State September 28, 1998.]

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

SECTION 1. The Legislature finds and declares all of the following:

(a) Under the federal Omnibus Budget Reconciliation Act of 1981 (Public Law 97-35), states may apply for waiver under Section 1915(c) of the federal Social Security Act (42 U.S.C. Sec. 1396n(c)) to make individuals eligible for Supplemental Security Income (SSI) and medicaid benefits when medical, remedial, and social services provided in the home can be shown to be less costly than services provided in an institution.

(b) Whenever possible, medical, remedial, and social services should be provided in the least restrictive setting at the lowest cost to programs involved.

(c) To the extent possible, and consistent with client preference, necessary medical and remedial services in the home can be provided through personal care services beyond those currently available under Section 14132.95 of the Welfare and Institutions Code.

(d) It is the intent of the Legislature that these services supplement and not supplant any services the client is entitled to receive under Section 14132.95 of the Welfare and Institutions Code.

SEC. 2. Section 14132.97 is added to the Welfare and Institutions Code, to read:

14132.97. (a) For purposes of this section, "waiver personal care services" means personal care services authorized by the department for persons who are eligible for either nursing or model nursing facility waiver services. Waiver personal care services shall be defined in these respective waivers, shall differ in scope from personal care services that may be authorized in Section 14132.95, and shall not replace any hours of services authorized or that may be authorized under Section 14132.95.

(b) An individual may receive waiver personal care services if all of the following conditions are met:

(1) The individual has been approved by the department to receive services in accordance with a waiver approved under Section 1915(c) of the federal Social Security Act (42 U.S.C. Sec. 1396n(c)) for persons who would otherwise require care in a nursing facility.

(2) The individual has doctor's orders that specify that he or she requires waiver personal care services in order to remain in his or her own home.

(3) The individual chooses, either personally or through a substitute decisionmaker who is recognized under state law for purposes of giving consent for medical treatment, to receive waiver personal care services, as well as medically necessary skilled nursing services, in order to remain in his or her own home.

(4) The waiver personal care services and all other waiver services for the individual do not result in costs that exceed the fiscal limit established under the waiver.

(c) The department shall notify the administrator of the in-home supportive services program in the county of residence of any individual who meets all requirements of subdivision (b) and has been authorized by the department to receive waiver personal care services. The county of residence shall then do the following:

(1) Inform the department of the personal care services that the individual is authorized to receive under Section 14132.95 at the time he or she becomes eligible for waiver personal care services.

(2) Determine the individual's eligibility for personal care services under Section 14132.95 if he or she is not currently authorized to receive those services and if he or she has not been previously determined eligible for those services.

(3) Implement the department's authorization for waiver personal care services for the individual at the quantity and scope authorized by the department.

(d) (1) Waiver personal care services approved by the department for individuals who meet the requirements of subdivision (b) may be provided in either of the following ways, or a combination of both:

(A) By a licensed and certified home health agency participating in the Medi-Cal program.

(B) By one or more providers of personal care services under Article 7 (commencing with Section 12300) of Chapter 3 and

subdivision (d) of Section 14132.95, when the individual elects, in writing, to utilize these service providers.

(2) The department shall approve waiver personal care services for individuals who meet the requirements of subdivision (b) only when the department finds that the individual's receipt of waiver personal care services is necessary in order to enable the individual to be maintained safely in his or her own home and community.

(3) When waiver personal care services are provided by a licensed and certified home health agency, the home health agency shall receive payment in the manner by which it would receive payment for any other service approved by the department.

(4) When waiver personal care services are provided by one or more providers of personal care services under Article 7 (commencing with Section 12300) of Chapter 3 and subdivision (d) of Section 14132.95, the providers shall receive payment on a schedule and in a manner by which providers of personal care services receive payment. The State Department of Social Services shall commence making payments for waiver personal care services when its payment system has been modified to accommodate those payments. No county shall be obligated to administer waiver personal care services until the State Department of Social Services payment system has been modified to accommodate those payments. However, any county or public authority or nonprofit consortium that administers the in-home supportive services program and personal care services program may pay providers for the delivery of waiver personal care services if it chooses to do so. In such a case, the county, public authority, or nonprofit consortium shall be reimbursed by the department for the waiver personal care services authorized by the department and provided to an individual upon submittal of documentation as required by the waiver, and in accordance with the requirements of the department.

(e) Waiver personal care services shall not count as alternative resources in a county's determination of the amount of services an individual may receive under Section 14132.95.

(f) Any administrative costs to the State Department of Social Services, a county, or a public authority or nonprofit consortium associated with implementing this section shall be considered administrative costs under the waiver and shall be reimbursed by the department.

(g) Two hundred fifty thousand dollars ($250,000) is appropriated from the General Fund to the State Department of Social Services for the 1998–99 fiscal year for the purpose of making changes to the case management, information, and payrolling system that are necessary for the implementation of this section.

(h) This section shall not be implemented until the department has obtained federal approval of any necessary amendments to the existing nursing facility and model nursing facility waivers and the state plan under Title 19 of the federal Social Security Act (42 U.S.C.

Sec. 1396 et seq.). Any amendments to the existing nursing facility and model nursing facility waivers and the state plan which are deemed to be necessary by the director shall be submitted to the federal Health Care Financing Administration by April 1, 1999.

(i) The department shall implement this section only to the extent that its implementation results in fiscal neutrality, as required under the terms of the waivers.

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 timely implement the funding and changes needed to effectuate this act in the 1998–99 fiscal year, it is necessary that this act take effect immediately.

CHAPTER 897

An act to amend Section 124980 of the Health and Safety Code, relating to hereditary disorders.

[Approved by Governor September 27, 1998. Filed with Secretary of State September 28, 1998.]

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

SECTION 1. Section 124980 of the Health and Safety Code is amended to read:

124980. (a) The director shall establish any regulations and standards for hereditary disorders programs as the director deems necessary to promote and protect the public health and safety, in accordance with the principles established pursuant to this section. These principles shall include, but not be limited to, the following:

(1) The public, especially communities and groups particularly affected by programs on hereditary disorders, should be consulted before any regulations and standards are adopted by the department.

(2) The incidence, severity and treatment costs of each hereditary disorder and its perceived burden by the affected community should be considered; and that where appropriate, state and national experts in the medical, psychological, ethical, social, and economic effects or programs for the detection and management of hereditary disorders be consulted by the department.

(3) Information on the operation of all programs on hereditary disorders within the state, except for confidential information obtained from participants in the programs, be open and freely available to the public.

(4) Clinical testing procedures established for use in programs, facilities, and projects be accurate, provide maximum information,

and that the testing procedures selected produce results that are subject to minimum misinterpretation.

(5) No test or tests shall be performed on any minor over the objection of the minor's parents or guardian, nor may any tests be performed unless the parent or guardian is fully informed of the purposes of testing for hereditary disorders, and is given reasonable opportunity to object to the testing.

(6) No testing, except initial screening for PKU and other diseases that may be added to the newborn screening program, shall require mandatory participation, and no testing programs shall require restriction of childbearing, and participation in a testing program shall not be a prerequisite to eligibility for, or receipt of, any other service or assistance from, or to participate in, any other program, except where necessary to determine eligibility for further programs of diagnoses of or therapy for hereditary conditions.

(7) Counseling services for hereditary disorders be available through the program or a referral source for all persons determined to be or who believe themselves to be at risk for a hereditary disorder as a result of screening programs; the counseling is nondirective, emphasizes informing the client, and not require restriction of childbearing.

(8) All participants in programs on hereditary disorders be protected from undue physical and mental harm, and except for initial screening for PKU and other diseases that may be added to newborn screening programs, be informed of the nature of risks involved in participation in the programs, and those determined to be affected with genetic disease be informed of the nature, and where possible, the cost of available therapies or maintenance programs, and be informed of the possible benefits and risks associated with such therapies and programs.

(9) All testing results and personal information generated from hereditary disorders programs be made available to an individual over 18 years of age, or to the individual's parent or guardian. If the individual is a minor or incompetent, all testing results that have positively determined the individual to either have, or be a carrier of, a heredity disorder shall be given through a physician or other source of health care.

(10) All testing results and personal information from hereditary disorders programs obtained from any individual, or from specimens from any individual, be held confidential and be considered a confidential medical record except for such information as the individual, parent, or guardian consents to be released; provided that the individual is first fully informed of the scope of the information requested to be released, of all of the risks, benefits, and purposes for the release, and of the identity of those to whom the information will be released or made available, except for statistical data compiled without reference to the identity of any individual, and except for research purposes, provided that pursuant to 45 Code of Federal

Regulations Section 46.101 et seq. entitled "Protection of Human Subjects," the research has first been reviewed and approved by an institutional review board that certifies the approval to the custodian of the information and further certifies that in its judgment the information is of such potentially substantial public health value that modification of the requirement for legally effective prior informed consent of the individual is ethically justifiable.

(11) An individual whose confidentiality has been breached as a result of any violation of the provisions of the Hereditary Disorders Act (Section 27) may recover compensatory damages, and in addition, may recover civil damages not to exceed ten thousand dollars ($10,000), reasonable attorney's fees, and the costs of litigation.

(b) The department shall recommend appropriate criteria and standards for licensing genetic counselors. In the process of developing the recommended criteria and standards, the department shall consult with a group of medical experts representing medical professional organizations including, but not limited to, the Medical Board of California, the California Medical Association, and organizations representing genetic counselors in California. The department shall report its recommendations to the Legislature by January 1, 2000.

CHAPTER 898

An act to amend Sections 1265.5, 1276.5, 1337.9, 1338.5, 1522, 1736.5, and 1736.6 of the Health and Safety Code, relating to human services, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 27, 1998. Filed with Secretary of State September 28, 1998.]

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

SECTION 1. Section 1265.5 of the Health and Safety Code is amended to read:

1265.5. (a) Prior to the initial licensure or renewal of a license of any person or persons to operate or manage an intermediate care facility/developmentally disabled habilitative, an intermediate care facility/developmentally disabled nursing, or an intermediate care facility/developmentally disabled, other than an intermediate care facility/developmentally disabled operated by the state that secures criminal record clearances for its employees through a method other than as specified in this section or upon the hiring of direct care staff by any of these facilities, the state department shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant, facility administrator or manager, any direct

care staff, or any other adult living in the same location, has ever been convicted of a crime other than a minor traffic violation.

(b) (1) The application for licensure or renewal shall be denied if the criminal record indicates that the person seeking initial licensure or renewal of a license referred to in subdivision (a) has been convicted of a violation or attempted violation of any one or more of the following Penal Code provisions: Section 187, subdivision (a) of Section 192, Section 203, 205, 206, 207, 209, 210, 210.5, 211, 220, 222, 243.4, 245, 261, 262, or 264.1, Sections 265 to 267, inclusive, Section 273a, 273d, 273.5, or 285, subdivisions (c), (d), (f), and (g) of Section 286, Section 288, subdivisions (c), (d), (f), and (g) of Section 288a, Section 288.5, 289, 289.5, 368, 451, 459, 470, 475, 484, or 484b, Sections 484d to 484j, inclusive, or Section 487, 488, 496, 503, 518, or 666, unless any of the following applies:

(A) The person was convicted of a felony and has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code and the information or accusation against the person has been dismissed pursuant to Section 1203.4 of the Penal Code with regard to that felony.

(B) The person was convicted of a misdemeanor and the information or accusation against the person has been dismissed pursuant to Section 1203.4 or 1203.4a of the Penal Code.

(C) The person was convicted of a felony or a misdemeanor, but has previously disclosed the fact of each conviction to the department and the department has made a determination in accordance with law that the conviction does not disqualify the person.

(D) The person was convicted of a misdemeanor violation of Section 488 or 496 and has had no subsequent conviction of either offense in the last five years. This paragraph shall become inoperative on August 1, 2001.

(2) The application for licensure or renewal shall be denied if the criminal record of the person includes a conviction in another state for an offense that, if committed or attempted in this state, would have been punishable as one or more of the offenses set forth in paragraph (1), unless evidence of rehabilitation comparable to the dismissal of a misdemeanor or a certificate of rehabilitation as set forth in subparagraph (A) or (B) of paragraph (1) is provided to the department.

(c) If the criminal record of a person described in subdivision (a) indicates any conviction other than a minor traffic violation or other than a conviction listed in subdivision (b), the department may deny the application for licensure or renewal. In determining whether or not to deny the application for licensure or renewal pursuant to this subdivision, the department shall take into consideration the following factors as evidence of good character and rehabilitation:

(1) The nature and seriousness of the offense under consideration and its relationship to their employment duties and responsibilities.

(2) Activities since conviction, including employment or participation in therapy or education, that would indicate changed behavior.

(3) The time that has elapsed since the commission of the conduct or offense referred to in paragraph (1) or (2) and the number of offenses.

(4) The extent to which the person has complied with any terms of parole, probation, restitution, or any other sanction lawfully imposed against the person.

(5) Any rehabilitation evidence, including character references, submitted by the person.

(6) Employment history and current employer recommendations.

(7) Circumstances surrounding the commission of the offense that would demonstrate the unlikelihood of repetition.

(8) The granting by the Governor of a full and unconditional pardon.

(9) A certificate of rehabilitation from a superior court.

(d) Nothing in this section shall be construed to require a criminal record check of a person receiving services in an intermediate care facility/developmentally disabled habilitative, intermediate care facility/developmentally disabled-nursing, or intermediate care facility/developmentally disabled.

(e) For purposes of this section, "direct care staff" means all facility staff who are trained and experienced in the care of persons with developmental disabilities and who directly provide program and nursing services to clients. Administrative and licensed personnel shall be considered direct care staff when directly providing program and nursing services to clients. Persons employed as consultants and acting as direct care staff shall be subject to the same requirements for a criminal record clearance as other direct care staff. However, the employing facility shall not be required to pay any costs associated with that criminal record clearance.

(f) Upon the employment of any person specified in subdivision (a), and prior to any contact with clients or residents, the facility shall submit fingerprint cards to the department for the purpose of obtaining a criminal record check.

(g) The department shall develop procedures to ensure that any licensee, direct care staff, or certificate holder for whom a criminal record has been obtained pursuant to this section or Section 1338.5 or 1736 shall not be required to obtain multiple criminal record clearances.

SEC. 2. Section 1276.5 of the Health and Safety Code is amended to read:

1276.5. (a) The department shall adopt regulations setting forth the minimum number of equivalent nursing hours per patient required in skilled nursing and intermediate care facilities, subject to

the specific requirements of Section 14110.7 of the Welfare and Institutions Code.

(b) (1) For the purposes of this section, "nursing hours" means the number of hours of work performed per patient day by aides, nursing assistants, or orderlies plus two times the number of hours worked per patient day by registered nurses and licensed vocational nurses (except directors of nursing in facilities of 60 or larger capacity) and, in the distinct part of facilities and freestanding facilities providing care for the developmentally disabled or mentally disordered, by licensed psychiatric technicians who perform direct nursing services for patients in skilled nursing and intermediate care facilities, except when the skilled nursing and intermediate care facility is licensed as a part of a state hospital.

(2) Concurrent with implementation of the first year of rates established under the Medi-Cal Long Term Care Reimbursement Act of 1990 (Article 3.8 (commencing with Section 14126) of Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code), for the purposes of this section, "nursing hours" means the number of hours of work performed per patient day by aides, nursing assistants, registered nurses, and licensed vocational nurses (except directors of nursing in facilities of 60 or larger capacity) and, in the distinct part of facilities and freestanding facilities providing care for the developmentally disabled or mentally disordered, by licensed psychiatric technicians who performed direct nursing services for patients in skilled nursing and intermediate care facilities, except when the skilled nursing and intermediate care facility is licensed as a part of a state hospital.

(c) Notwithstanding Section 1276, the department shall require the utilization of a registered nurse at all times if the department determines that the services of a skilled nursing and intermediate care facility require the utilization of a registered nurse.

(d) (1) Except as otherwise provided by law, the administrator of an intermediate care facility/developmentally disabled, intermediate care facility/developmentally disabled habilitative, or an intermediate care facility/developmentally disabled—nursing shall be either a licensed nursing home administrator or a qualified mental retardation professional as defined in Section 483.430 of Title 42 of the Code of Federal Regulations.

(2) To qualify as an administrator for an intermediate care facility for the developmentally disabled, a qualified mental retardation professional shall complete at least six months of administrative training or demonstrate six months of experience in an administrative capacity in a licensed health facility, as defined in Section 1250, excluding those facilities specified in subdivisions (e), (h), and (i).

SEC. 3. Section 1337.9 of the Health and Safety Code is amended to read:

1337.9. (a) (1) The state department may deny an application for, initiate an action to suspend or revoke a certificate for, or deny a training and examination application for a nurse assistant.

(2) The state department shall deny a training and examination application and deny, suspend, or revoke a certificate issued under this article if the applicant or certificate holder has been convicted of a violation or attempted violation of any one or more of the following Penal Code provisions: Section 187, subdivision (a) of Section 192, Section 203, 205, 206, 207, 209, 210, 210.5, 211, 220, 222, 243.4, 245, 261, 262, or 264.1, Sections 265 to 267, inclusive, Section 273a, 273d, 273.5, or 285, subdivisions (c), (d), (f), and (g) of Section 286, Section 288, subdivisions (c), (d), (f), and (g) of Section 288a, Section 288.5, 289, 289.5, 368, 451, 459, 470, 475, 484, or 484b, Sections 484d to 484j, inclusive, Section 487, 488, 496, 503, 518, or 666, unless any of the following applies:

(A) The person was convicted of a felony and has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code and the information or accusation against him or her has been dismissed pursuant to Section 1203.4 of the Penal Code.

(B) The person was convicted of a misdemeanor and the information or accusation against him or her has been dismissed pursuant to Section 1203.4 or 1203.4a of the Penal Code.

(C) The certificate holder was convicted of a felony or a misdemeanor, but has previously disclosed the fact of each conviction to the department, and the department has made a determination in accordance with law that the conviction does not disqualify the applicant from certification.

(D) The person was convicted of a misdemeanor violation of Section 488 or 496, is requesting a renewal of their certificate, and has had no subsequent convictions in the last five years. This paragraph shall become inoperative on August 1, 2001.

(b) An application or certificate shall be denied, suspended, or revoked upon conviction in another state of an offense that, if committed or attempted in this state, would have been punishable as one or more of the offenses set forth in subdivision (a), unless evidence of rehabilitation comparable to the certificate of rehabilitation or dismissal of a misdemeanor set forth in paragraph (1) or (2) of subdivision (a) is provided.

(c) The state department may deny an application or deny, suspend, or revoke a certificate issued under this article for any of the following:

(1) Unprofessional conduct, including, but not limited to, incompetence, gross negligence, unless due to circumstances beyond the nurse assistant's control, physical, mental, or verbal abuse of patients, or misappropriation of property of patients or others.

(2) Conviction of a crime substantially related to the qualifications, functions, and duties of a certified nurse assistant,

irrespective of a subsequent order under Section 1203.4, 1203.4a, or 4852.13 of the Penal Code, where the state department determines that the applicant or certificate holder has not adequately demonstrated that he or she has been rehabilitated and will present a threat to the health, safety, or welfare of patients.

(3) Conviction for, or use of, any controlled substance as defined in Division 10 (commencing with Section 11000), or any dangerous drug, as defined in Section 4022 of the Business and Professions Code, or alcoholic beverages, to an extent or in a manner dangerous or injurious to the certified nurse assistant, any other person, or the public, to the extent that this use would impair the ability to conduct, with safety to the public, the practice authorized by a certificate.

(4) Procuring a certified nurse assistant certificate by fraud or misrepresentation or mistake.

(5) Making or giving any false statement or information in conjunction with the application for issuance of a nurse assistant certificate or training and examination application.

(6) Impersonating any applicant, or acting as proxy for an applicant, in any examination required under this article for the issuance of a certificate.

(7) Impersonating another certified nurse assistant, a licensed vocational nurse, or a registered nurse, or permitting or allowing another person to use a certificate for the purpose of providing nursing services.

(8) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violating of, or conspiring to violate any provision or term of, this article.

(d) In determining whether or not to deny the application for licensure or renewal pursuant to subdivision (c), the department shall take into consideration the following factors as evidence of good character and rehabilitation:

(1) The nature and seriousness of the conduct or crime under consideration and its relationship to their employment duties and responsibilities.

(2) Activities since conviction, including employment or participation in therapy or education, that would indicate changed behavior.

(3) The time that has elapsed since the commission of the conduct or offense referred to in paragraph (1) or (2) and the number of offenses.

(4) The extent to which the person has complied with any terms of parole, probation, restitution, or any other sanction lawfully imposed against the person.

(5) Any rehabilitation evidence, including character references, submitted by the person.

(6) Employment history and current employer recommendations.

(7) Circumstances surrounding the commission of the offense that would demonstrate the unlikelihood of repetition.

(8) The granting by the Governor of a full and unconditional pardon.

(9) A certificate of rehabilitation from a superior court.

(e) When the state department determines that a certificate shall be suspended, the state department shall specify the period of actual suspension. The state department may determine that the suspension shall be stayed, placing the certificate holder on probation with specified conditions for a period not to exceed two years. When the state department determines that probation is the appropriate action, the certificate holder shall be notified that in lieu of the state department proceeding with a formal action to suspend the certification and in lieu of an appeal pursuant to subdivision (h), the certificate holder may request to enter into a diversion program agreement. A diversion program agreement shall specify terms and conditions related to matters, including, but not limited to, work performance, rehabilitation, training, counseling, progress reports, and treatment programs. If a certificate holder successfully completes a diversion program, no action shall be taken upon the allegations that were the basis for the diversion agreement. Upon failure of the certificate holder to comply with the terms and conditions of an agreement, the state department may proceed with a formal action to suspend or revoke the certification.

(f) A plea or verdict of guilty, or a conviction following a plea of nolo contendere shall be deemed a conviction within the meaning of this article. The state department may deny an application or deny, suspend, or revoke a certification based on a conviction as provided in this article when the judgment of conviction is entered or when an order granting probation is made suspending the imposition of sentence.

(g) Upon determination to deny an application or deny, revoke, or suspend a certificate, the state department shall notify the applicant or certificate holder in writing by certified mail of all of the following:

(1) The reasons for the determination.

(2) The applicant's or certificate holder's right to appeal the determination if the determination was made under subdivision (c).

(h) (1) Upon written notification that the state department has determined that an application shall be denied or a certificate shall be denied, suspended, or revoked under subdivision (c), the applicant or certificate holder may request an administrative hearing by submitting a written request to the state department within 20 business days of receipt of the written notification. Upon receipt of a written request, the state department shall hold an administrative hearing pursuant to the procedures specified in Section 100171, except where those procedures are inconsistent with this section.

(2) A hearing under this section shall be conducted within 60 days of the receipt of the written request of the applicant or certificate holder submitted pursuant to paragraph (1) by a hearing officer or administrative law judge designated by the director at a location, other than the work facility, convenient to the applicant or certificate holder unless the applicant or certificate holder agrees to an extension. The hearing shall be tape recorded and a written decision shall be sent by certified mail to the applicant or certificate holder within 30 calendar days of the hearing. Except as specified in subdivision (i), the effective date of an action to revoke or suspend a certificate shall be specified in the written decision, or if no administrative hearing is timely requested, the effective date shall be 21 business days from written notification of the department's determination to revoke or suspend.

(i) The state department may revoke or suspend a certificate prior to any hearing when immediate action is necessary in the judgment of the director to protect the public welfare. Notice of this action, including a statement of the necessity of immediate action to protect the public welfare, shall be sent in accordance with subdivision (g). If the certificate holder requests an administrative hearing pursuant to subdivision (h), the state department shall hold the administrative hearing as soon as possible but not later than 30 calendar days from receipt of the request for a hearing. A written hearing decision upholding or setting aside the action shall be sent by certified mail to the certificate holder within 30 calendar days of the hearing.

(j) Upon the expiration of the term of suspension, he or she shall be reinstated by the state department and shall be entitled to resume practice unless it is established to the satisfaction of the state department that the person has practiced as a certified nurse assistant in this state during the term of suspension. In this event, the state department shall revoke the person's certificate.

(k) Upon a determination to deny an application or deny, revoke, or suspend a certificate, the state department shall notify the employer of the applicant and certificate holder in writing of that determination, and whether the determination is final, or whether a hearing is pending relating to this determination. If a licensee or facility is required to deny employment or terminate employment of the employee based upon notice from the state that the employee is determined to be unsuitable for employment under this section, the licensee or facility shall not incur criminal, civil, unemployment insurance, workers' compensation, or administrative liability as a result of that denial or termination.

SEC. 4. Section 1338.5 of the Health and Safety Code is amended to read:

1338.5. (a) (1) A criminal record clearance shall be conducted for all nurse assistants by the submission of fingerprint cards to the state department for processing at the Department of Justice. This

criminal record clearance shall be completed prior to issuing or renewing a certificate. Applicants shall be responsible for any costs associated with rolling the fingerprint cards. The fee to cover the processing costs of the Department of Justice, not including the costs associated with rolling the fingerprint cards, shall not exceed thirty-two dollars ($32) per card.

(2) (A) Upon enrollment in a training program for nurse assistant certification, and prior to direct contact with residents, a candidate for training shall submit a training and examination application and the fingerprint cards to the state department to receive a criminal record review through the Department of Justice. Submission of the fingerprints to the Federal Bureau of Investigation shall be at the discretion of the state department.

(B) New nurse assistant applicants who are unemployed and unable to pay the fee charged by the Department of Justice pursuant to paragraph (1) of subdivision (a) due to financial hardship may request a waiver for a period not to exceed six months. The request for waiver shall be made in writing at the time the fingerprint card is submitted for processing. The applicant shall agree to pay the fee within six months of employment. The failure to pay the fee within the six-month period shall result in the inactivation of the applicant's certificate until the fee is paid in full.

(b) Upon receipt of the fingerprints, the Department of Justice shall notify the state department of the criminal record information, as provided for in this subdivision. If no criminal record information has been recorded, the Department of Justice shall provide the state department with a statement of that fact. If the fingerprints are illegible, the Department of Justice shall, within 15 calendar days from receipt of the fingerprints, notify the state department of that fact.

(c) The department shall respond to the applicant and employer within 30 days from the date of receipt of the fingerprint cards.

(d) The use of fingerprint live-scan technology implemented by the Department of Justice by the year 1999 shall be used by the Department of Justice to generate timely and accurate positive fingerprint identification prior to nurse assistant certification.

(e) The state department shall develop procedures to ensure that any licensee, direct care staff, or certificate holder for whom a criminal record has been obtained pursuant to this section or Section 1265.5 or 1736 shall not be required to obtain multiple criminal record clearances.

(f) If the department receives a fingerprint card from a certified nursing assistant 60 days prior to the expiration of the certified nursing assistant's certification and the department has received no response from the Department of Justice, or if the department is experiencing a delay in processing the renewal of the certified nursing assistant's certification at the time of the expiration of the certified nursing assistant's certification, the department may extend

the expiration of the certified nursing assistant's certification for 60 days. This provision shall expire August 1, 2001.

SEC. 5. Section 1522 of the Health and Safety Code is amended to read:

1522. The Legislature recognizes the need to generate timely and accurate positive fingerprint identification of applicants as a condition of issuing licenses, permits, or certificates of approval for persons to operate or provide direct care services in a community care facility, foster family home, or a certified family home. Therefore, the Legislature supports the use of the fingerprint live-scan technology, as identified in the long-range plan of the Department of Justice for fully automating the processing of fingerprints and other data by the year 1999, otherwise known as the California Crime Information Intelligence System (CAL-CII), to be used for applicant fingerprints. It is the intent of the Legislature in enacting this section to require the fingerprints of those individuals whose contact with community care clients may pose a risk to the clients' health and safety.

(a) Before issuing a license or special permit to any person or persons to operate or manage a community care facility, the State Department of Social Services shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any other person specified in subdivision (b) has ever been convicted of a crime other than a minor traffic violation or arrested for any crime specified in Section 290 of the Penal Code, for violating Section 245 or 273.5, subdivision (b) of Section 273a or, prior to January 1, 1994, paragraph (2) of Section 273a of the Penal Code, or for any crime for which the department cannot grant an exemption if the person was convicted and the person has not been exonerated. That criminal history information shall include the full criminal record, of any of those persons, and subsequent arrest information pursuant to Section 11105.2 of the Penal Code. No fee shall be charged by the Department of Justice or the State Department of Social Services for the fingerprinting of an applicant for a license or special permit to operate a facility providing nonmedical board, room, and care for six or less children or for obtaining a criminal record of the applicant pursuant to this section. The following shall apply to the criminal record information:

(1) If the State Department of Social Services finds that the applicant, or any other person specified in subdivision (b), has been convicted of a crime other than a minor traffic violation, the application shall be denied, unless the director grants an exemption pursuant to subdivision (g).

(2) If the State Department of Social Services finds that the applicant, or any person specified in subdivision (b) is awaiting trial for a crime other than a minor traffic violation, the State Department of Social Services shall cease processing the application until the conclusion of the trial.

(3) If no criminal record information has been recorded, the Department of Justice shall provide the applicant and the State Department of Social Services with a statement of that fact.

(4) If the State Department of Social Services finds after licensure that the licensee, or any other person specified in paragraph (2) of subdivision (b), has been convicted of a crime other than a minor traffic violation, the license may be revoked, unless the director grants an exemption pursuant to subdivision (g).

(b) In addition to the applicant, this section shall be applicable to criminal convictions of the following persons:

(1) Adults responsible for administration or direct supervision of staff.

(2) Any person, other than a client, residing in the facility.

(3) Any person who provides client assistance in dressing, grooming, bathing, or personal hygiene. Any nurse assistant or home health aide meeting the requirements of Section 1338.5 or 1736.6, respectively, who is not employed, retained, or contracted by the licensee, and who has been certified or recertified on or after July 1, 1998, shall be deemed to meet the criminal record clearance requirements of this section. A certified nurse assistant and certified home health aide who will be providing client assistance and who falls under this exception shall provide one copy of his or her certification, prior to providing care, to the adult community care facility. The facility shall maintain the copy of the certification on file as long as care is being provided by the certified nurse assistant or certified home health aide at the facility. Nothing in this paragraph restricts the right of the department to exclude a certified nurse assistant or certified home health aide from a licensed community care facility pursuant to Section 1558.

(4) Any staff person or employee who has frequent and routine contact with the clients. In determining who has frequent contact, any volunteer who is in the facility shall be exempt unless the volunteer is used to replace or supplement staff in providing direct care and supervision of clients. In determining who has routine contact, staff and employees under direct onsite supervision and who are not providing direct care and supervision or who have only occasional or intermittent contact with clients shall be exempt.

(5) If the applicant is a firm, partnership, association, or corporation, the chief executive officer or other person serving in like capacity.

(6) Additional officers of the governing body of the applicant, or other persons with a financial interest in the applicant, as determined necessary by the department by regulation. The criteria used in the development of these regulations shall be based on the person's capability to exercise substantial influence over the operation of the facility.

(c) (1) Subsequent to initial licensure, any person specified in subdivision (b) and not exempted from fingerprinting shall, as a

condition to employment, residence, or presence in a community care facility, be fingerprinted and sign a declaration under penalty of perjury regarding any prior criminal convictions. The licensee shall submit these fingerprints to the Department of Justice not later than four calendar days following employment, residence, or initial presence in the community care facility. These fingerprints shall be on a card provided by the State Department of Social Services for the purpose of obtaining a permanent set of fingerprints. Fingerprints not submitted to the Department of Justice, as required in this section, shall result in the citation of a deficiency and the fingerprints shall then be submitted to the State Department of Social Services for processing. Upon request of the licensee, who shall enclose a self-addressed stamped postcard for this purpose, the Department of Justice shall verify receipt of the fingerprints.

(2) Within 30 calendar days of the receipt of the fingerprints, the Department of Justice shall notify the State Department of Social Services of the criminal record information, as provided for in subdivision (a). If no criminal record information has been recorded, the Department of Justice shall provide the licensee and the State Department of Social Services with a statement of that fact within 15 calendar days of receipt of the fingerprints. If new fingerprints are required for processing, the Department of Justice shall, within 15 calendar days from the date of receipt of the fingerprints, notify the licensee that the fingerprints were illegible.

(3) Except for persons specified in paragraph (2) of subdivision (b), the licensee shall endeavor to ascertain the previous employment history of persons required to be fingerprinted under this subdivision. If it is determined by the State Department of Social Services, on the basis of the fingerprints submitted to the Department of Justice, that the person has been convicted of, or is awaiting trial for, a sex offense against a minor, or has been convicted for an offense specified in Section 243.4, 273a, or 273d or subdivision (a) or (b) of Section 368 of the Penal Code, or a felony, the State Department of Social Services shall notify the licensee to act immediately to terminate the person's employment, remove the person from the community care facility, or bar the person from entering the community care facility. The State Department of Social Services may subsequently grant an exemption pursuant to subdivision (g). If the conviction or arrest was for another crime, except a minor traffic violation, the licensee shall, upon notification by the State Department of Social Services, act immediately to either (1) terminate the person's employment, remove the person from the community care facility, or bar the person from entering the community care facility; or (2) seek an exemption pursuant to subdivision (g). The State Department of Social Services shall determine if the person shall be allowed to remain in the facility until a decision on the exemption is rendered. A licensee's failure to comply with the department's prohibition of employment, contact

with clients, or presence in the facility as required by this paragraph shall be grounds for disciplining the licensee pursuant to Section 1550.

(4) The department may issue an exemption on its own motion pursuant to subdivision (g) if the person's criminal history indicates that the person is of good character based on the age, seriousness, and frequency of the conviction or convictions. The department, in consultation with interested parties, shall develop regulation to establish the criteria to grant an exemption pursuant to this paragraph.

(5) Concurrently with notifying the licensee pursuant to paragraph (3), the department shall notify the affected individual of his or her right to seek an exemption pursuant to subdivision (g). The individual may seek an exemption only if the licensee terminates the person's employment or removes the person from the facility after receiving notice from the department pursuant to paragraph (3).

(d) (1) Before issuing a license, special permit, or certificate of approval to any person or persons to operate or manage a foster family home or certified family home as described in Section 1506, the State Department of Social Services or other approving authority shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any person specified in subdivision (b) has ever been convicted of a crime other than a minor traffic violation or arrested for any crime specified in Section 290 of the Penal Code or arrested for violating Section 245 or 273.5, subdivision (b) of Section 273a or, prior to January 1, 1994, paragraph (2) of Section 273a of the Penal Code, or for any crime for which the department cannot grant an exemption if the person was convicted and the person has not been exonerated. That criminal history information shall include the full criminal record, if any, of those persons. No fee shall be charged by the Department of Justice or the State Department of Social Services for the fingerprinting of an applicant for a license, special permit, or certificate of approval described in this subdivision. The record, if any, shall be taken into consideration when evaluating a prospective applicant. The following shall apply to the criminal record information:

(A) If the applicant or other persons specified in subdivision (b) have convictions that would make the applicant's home unfit as a foster family home or a certified family home, the license, special permit, or certificate of approval shall be denied.

(B) If the State Department of Social Services finds that the applicant, or any person specified in subdivision (b) is awaiting trial for a crime other than a minor traffic violation, the State Department of Social Services or other approving authority shall cease processing the application until the conclusion of the trial.

(C) For the purposes of this subdivision, a criminal record clearance provided under Section 8712 of the Family Code may be used by the department or other approving agency.

(2) Any person specified in this subdivision shall, as a part of the application, be fingerprinted and sign a declaration under penalty of perjury regarding any prior criminal convictions or arrests for any crime against a child, spousal or cohabitant abuse or, any crime for which the department cannot grant an exemption if the person was convicted and shall submit these fingerprints to the licensing agency or other approving authority.

(3) The foster family agency shall obtain fingerprints from certified home applicants and from persons specified in subdivision (b) and shall submit them directly to the Department of Justice. Within five working days of the receipt of the criminal record or information regarding criminal convictions from the Department of Justice, the department shall notify the applicant of any criminal arrests or convictions. If no arrests or convictions are recorded, the Department of Justice shall provide the foster family agency with a statement of that fact concurrent with providing the information to the State Department of Social Services.

(4) If the State Department of Social Services finds that the applicant, or any other person specified in subdivision (b), has been convicted of a crime other than a minor traffic violation, the application shall be denied, unless the director grants an exemption pursuant to subdivision (g).

(5) If the State Department of Social Services finds after licensure or the granting of the certificate of approval that the licensee, certified foster parent, or any other person specified in paragraph (2) of subdivision (b), has been convicted of a crime other than a minor traffic violation, the license or certificate of approval may be revoked by the department or the foster family agency, whichever is applicable, unless the director grants an exemption pursuant to subdivision (g). A licensee's failure to comply with the department's prohibition of employment, contact with clients, or presence in the facility as required by paragraph (3) of subdivision (c) shall be grounds for disciplining the licensee pursuant to Section 1550.

(e) The State Department of Social Services shall not use a record of arrest to deny, revoke, or terminate any application, license, employment, or residence unless the department investigates the incident and secures evidence, whether or not related to the incident of arrest, that is admissible in an administrative hearing to establish conduct by the person that may pose a risk to the health and safety of any person who is or may become a client. The State Department of Social Services is authorized to obtain any arrest or conviction records or reports from any law enforcement agency as necessary to the performance of its duties to inspect, license, and investigate community care facilities and individuals associated with a community care facility.

(f) For purposes of this section or any other provision of this chapter, a conviction means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which the State

Department of Social Services is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, notwithstanding a subsequent order pursuant to Sections 1203.4 and 1203.4a of the Penal Code permitting the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment. For purposes of this section or any other provision of this chapter, the record of a conviction, or a copy thereof certified by the clerk of the court or by a judge of the court in which the conviction occurred, shall be conclusive evidence of the conviction. For purposes of this section or any other provision of this chapter, the arrest disposition report certified by the Department of Justice, or documents admissible in a criminal action pursuant to Section 969b of the Penal Code, shall be prima facie evidence of the conviction, notwithstanding any other provision of law prohibiting the admission of these documents in a civil or administrative action.

(g) (1) After review of the record, the director may grant an exemption from disqualification for a license or special permit as specified in paragraphs (1) and (4) of subdivision (a), or for a license, special permit, or certificate of approval as specified in paragraphs (4) and (5) of subdivision (d), or for employment, residence, or presence in a community care facility as specified in paragraphs (3), (4), and (5) of subdivision (c), if the director has substantial and convincing evidence to support a reasonable belief that the applicant and the person convicted of the crime, if other than the applicant, are of such good character as to justify issuance of the license or special permit or granting an exemption for purposes of subdivision (c). Except as otherwise provided in this subdivision, no exemption shall be granted pursuant to this subdivision if the conviction was for an offense specified in Section 220, 243.4, or 264.1, subdivision (a) of Section 273a or, prior to January 1, 1994, paragraph (1) of Section 273a, Section 273d, 288, or 289, subdivision (a) of Section 290, or subdivision (a) or (b) of Section 368 of the Penal Code, or was a conviction of another crime against an individual specified in subdivision (c) of Section 667.5 of the Penal Code. The director may grant an exemption if the employee or prospective employee, who was convicted of a crime against an individual prescribed in paragraph (1), (2), (7), or (8) of subdivision (c) of Section 667.5 of the Penal Code, has been rehabilitated as provided in Section 4852.03 of the Penal Code, has maintained the conduct required in Section 4852.05 of the Penal Code for at least 10 years, and has the recommendation of the district attorney representing the employee's county of residence, or if the employee or prospective employee has received a certificate of rehabilitation pursuant to

Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code.

(2) The department shall not prohibit a person from being employed or having contact with clients in a facility on the basis of a denied criminal record exemption request or arrest information unless the department complies with the requirements of Section 1558.

(h) (1) For purposes of compliance with this section, the department may permit an individual to transfer a current criminal records clearance, as defined in subdivision (a), from one facility to another, as long as the criminal record clearance has been processed through a state licensing district office, and is being transferred to another state licensing district office.

(2) The State Department of Social Services shall hold criminal record clearances in its active files for a minimum of two years after an employee is no longer employed at a licensed facility in order for the criminal record clearance to be transferred.

(i) The full criminal record obtained for purposes of this section may be used by the department or by a licensed adoption agency as a clearance required for adoption purposes.

(j) If a licensee or facility is required by law to deny employment or to terminate employment of any employee based on written notification from the state department that the employee has a prior criminal conviction or is determined unsuitable for employment under Section 1558, the licensee or facility shall not incur civil liability or unemployment insurance liability as a result of that denial or termination.

(k) (1) In order to expedite the current criminal record clearance and fingerprint process of the Department of Justice pursuant to subdivisions (a) and (c), the Department of Justice shall complete work on all of its current backlog of criminal records clearances for community care facilities licensed by the State Department of Social Services by July 1, 1995.

(2) Effective January 1, 1995, the Department of Justice shall complete all new requests for criminal record clearances for community care facilities within 30 days of receipt.

(3) The Department of Justice shall coordinate with the State Department of Social Services to establish and implement an automated live-scan processing system for fingerprints in two district offices of the Community Care Licensing Division of the State Department of Social Services by July 1, 1995. These live-scan processing units shall be connected to the main system at the Department of Justice by July 1, 1996, and shall become part of that department's pilot project in accordance with its long-range plan. The State Department of Social Services may charge a fee not to exceed five dollars ($5) or the actual cost of processing a set of live-scan fingerprints.

(4) The Department of Justice shall provide a report to the Assembly Human Services Committee and to the Senate Health and Human Services Committee by July 15, 1995, regarding the completion of backlogged criminal record clearance requests pursuant to paragraph (1) and the progress on implementing the automated live-scan processing system in the two district offices pursuant to paragraph (3). The Department of Justice shall provide a report to the Assembly Human Services Committee and to the Senate Health and Human Services Committee by April 15, 1996, regarding the progress of the implementation of the statewide CAL-CII system; the number of requests for criminal clearances received pursuant to this section during the previous year; the number of criminal record clearances requested and completed pursuant to this section within a 17-day "expedite" period or within the 30-day period required by paragraph (2); and the number of requests and reasons for delays beyond the 30-day period.

SEC. 6. Section 1736.5 of the Health and Safety Code is amended to read:

1736.5. (a) The state department shall deny a training application and deny, suspend, or revoke a certificate issued under this article if the applicant or certificate holder has been convicted of a violation or attempted violation of any of the following Penal Code provisions: Section 187, subdivision (a) of Section 192, Section 203, 205, 206, 207, 209, 210, 210.5, 211, 220, 222, 243.4, 245, 261, 262, or 264.1, Sections 265 to 267, inclusive, Section 273a, 273d, 273.5, or 285, subdivisions (c), (d), (f), and (g) of Section 286, Section 288, subdivisions (c), (d), (f), and (g) of Section 288a, Section 288.5, 289, 289.5, 368, 451, 459, 470, 475, 484, or 484b, Sections 484d to 484j, inclusive, Section 487, 488, 496, 503, 518, or 666, unless any of the following apply:

(1) The person was convicted of a felony and has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of the Penal Code and the information or accusation against him or her has been dismissed pursuant to Section 1203.4 of the Penal Code.

(2) The person was convicted of a misdemeanor and the information or accusation against him or her has been dismissed pursuant to Section 1203.4 or 1203.4a of the Penal Code.

(3) The certificate holder was convicted of a felony or a misdemeanor, but has previously disclosed the fact of each conviction to the department, and the department has made a determination in accordance with law that the conviction does not disqualify the applicant from certification.

(b) An application or certificate shall be denied, suspended, or revoked upon conviction in another state of an offense that, if committed or attempted in this state, would have been punishable as one or more of the offenses set forth in subdivision (a), unless evidence of rehabilitation comparable to the certificate of

rehabilitation or dismissal of a misdemeanor set forth in paragraph (1) or (2) of subdivision (a) is provided.

(c) (1) The state department may deny an application or deny, suspend, or revoke a certificate issued under this article for any of the following:

(A) Unprofessional conduct, including, but not limited to, incompetence, gross negligence, physical, mental, or verbal abuse of patients, or misappropriation of property of patients or others.

(B) Conviction of a crime substantially related to the qualifications, functions, and duties of a home health aide, irrespective of a subsequent order under Section 1203.4, 1203.4a, or 4852.13 of the Penal Code, where the state department determines that the applicant or certificate holder has not adequately demonstrated that he or she has been rehabilitated and will present a threat to the health, safety, or welfare of patients.

(C) Conviction for, or use of, any controlled substance as defined in Division 10 (commencing with Section 11000), or any dangerous drug, as defined in Section 4022 of the Business and Professions Code, or alcoholic beverages, to an extent or in a manner dangerous or injurious to the home health aide, any other person, or the public, to the extent that this use would impair the ability to conduct, with safety to the public, the practice authorized by a certificate.

(D) Procuring a home health aide certificate by fraud, misrepresentation, or mistake.

(E) Making or giving any false statement or information in conjunction with the application for issuance of a home health aide certificate or training and examination application.

(F) Impersonating any applicant, or acting as proxy for an applicant, in any examination required under this article for the issuance of a certificate.

(G) Impersonating another home health aide, a licensed vocational nurse, or a registered nurse, or permitting or allowing another person to use a certificate for the purpose of providing nursing services.

(H) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of, this article.

(2) In determining whether or not to deny an application or deny, suspend, or revoke a certificate issued under this article pursuant to this subdivision, the department shall take into consideration the following factors as evidence of good character and rehabilitation:

(A) The nature and seriousness of the offense under consideration and its relationship to their employment duties and responsibilities.

(B) Activities since conviction, including employment or participation in therapy or education, that would indicate changed behavior.

(C) The time that has elapsed since the commission of the conduct or offense referred to in subparagraph (A) or (B) and the number of offenses.

(D) The extent to which the person has complied with any terms of parole, probation, restitution, or any other sanction lawfully imposed against the person.

(E) Any rehabilitation evidence, including character references, submitted by the person.

(F) Employment history and current employer recommendations.

(G) Circumstances surrounding the commission of the offense that would demonstrate the unlikelihood of repetition.

(H) Granting by the Governor of a full and unconditional pardon.

(I) A certificate of rehabilitation from a superior court.

(d) When the state department determines that a certificate shall be suspended, the state department shall specify the period of actual suspension. The state department may determine that the suspension shall be stayed, placing the certificate holder on probation with specified conditions for a period not to exceed two years. When the state department determines that probation is the appropriate action, the certificate holder shall be notified that in lieu of the state department proceeding with a formal action to suspend the certification and in lieu of an appeal pursuant to subdivision (g), the certificate holder may request to enter into a diversion program agreement. A diversion program agreement shall specify terms and conditions related to matters, including, but not limited to, work performance, rehabilitation, training, counseling, progress reports, and treatment programs. If a certificate holder successfully completes a diversion program, no action shall be taken upon the allegations that were the basis for the diversion agreement. Upon failure of the certificate holder to comply with the terms and conditions of an agreement, the state department may proceed with a formal action to suspend or revoke the certification.

(e) A plea or verdict of guilty, or a conviction following a plea of nolo contendere, shall be deemed a conviction within the meaning of this article. The state department may deny an application or deny, suspend, or revoke a certification based on a conviction as provided in this article when the judgment of conviction is entered or when an order granting probation is made suspending the imposition of sentence.

(f) Upon determination to deny an application or deny, revoke, or suspend a certificate, the state department shall notify the applicant or certificate holder in writing by certified mail of all of the following:

(1) The reasons for the determination.

(2) The applicant's or certificate holder's right to appeal the determination if the determination was made under subdivision (c).

(g) (1) Upon written notification that the state department has determined that an application shall be denied or a certificate shall be denied, suspended, or revoked under subdivision (c), the applicant or certificate holder may request an administrative hearing by submitting a written request to the state department within 20 business days of receipt of the written notification. Upon receipt of a written request, the state department shall hold an administrative hearing pursuant to the procedures specified in Section 100171, except where those procedures are inconsistent with this section.

(2) A hearing under this section shall be conducted by a hearing officer or administrative law judge designated by the director at a location other than the work facility convenient to the applicant or certificate holder. The hearing shall be tape recorded and a written decision shall be sent by certified mail to the applicant or certificate holder within 30 calendar days of the hearing. Except as specified in subdivision (h), the effective date of an action to revoke or suspend a certificate shall be specified in the written decision, or if no administrative hearing is timely requested, the effective date shall be 21 business days from written notification of the department's determination to revoke or suspend.

(h) The state department may revoke or suspend a certificate prior to any hearing when immediate action is necessary in the judgment of the director to protect the public welfare. Notice of this action, including a statement of the necessity of immediate action to protect the public welfare, shall be sent in accordance with subdivision (f). If the certificate holder requests an administrative hearing pursuant to subdivision (g), the state department shall hold the administrative hearing as soon as possible but not later than 30 calendar days from receipt of the request for a hearing. A written hearing decision upholding or setting aside the action shall be sent by certified mail to the certificate holder within 30 calendar days of the hearing.

(i) Upon the expiration of the term of suspension, he or she shall be reinstated by the state department and shall be entitled to resume practice unless it is established to the satisfaction of the state department that the person has practiced as a home health aide in California during the term of suspension. In this event, the state department shall revoke the person's certificate.

(j) Upon a determination to deny an application or deny, revoke, or suspend a certificate, the department shall notify the employer of the applicant or certificate holder in writing of that determination, and whether the determination is final, or whether a hearing is pending relating to this determination. If a licensee or facility is required to deny employment or terminate employment of the employee based upon notice from the state that the employee is determined to be unsuitable for employment under this section, the licensee or facility shall not incur criminal, civil, unemployment

insurance, workers' compensation, or administrative liability as a result of that denial or termination.

SEC. 7. Section 1736.6 of the Health and Safety Code is amended to read:

1736.6. (a) (1) A criminal record clearance shall be conducted for all home health aides by the submission of fingerprint cards to the state department for processing at the Department of Justice. This criminal record clearance shall be completed prior to issuing or renewing a certificate. Applicants shall be responsible for any costs associated with rolling the fingerprint cards. The fee to cover the processing costs of the Department of Justice, not including the costs associated with rolling the fingerprint cards, shall not exceed thirty-two dollars ($32) per card.

(2) (A) Upon enrollment in a training program for home health aide certification, and prior to direct contact with residents, a candidate for training shall submit a training and examination application and the fingerprint cards to the state department to receive a criminal record review through the Department of Justice. Submission of the fingerprints to the Federal Bureau of Investigation shall be at the discretion of the state department.

(B) New home health aide applicants who are unemployed and unable to pay the fee charged by the Department of Justice pursuant to paragraph (1) of subdivision (a) due to financial hardship may request a waiver for a period not to exceed six months. The request for waiver shall be made in writing at the time the fingerprint card is submitted for processing. The applicant shall agree to pay the fee within six months of employment. The failure to pay the fee within the six-month period shall result in the inactivation of the applicant's certificate until the fee is paid in full.

(b) Upon receipt of the fingerprints, the Department of Justice shall notify the state department of the criminal record information, as provided for in this subdivision. If no criminal record information has been recorded, the Department of Justice shall provide the state department with a statement of that fact. If the fingerprints are illegible, the Department of Justice shall, within 15 calendar days from receipt of the fingerprints, notify the state department of that fact.

(c) The department shall respond to the applicant and employer within 30 days from the date of receipt of the fingerprint cards.

(d) A criminal record clearance, consistent with this section shall be implemented for home health aide applicants beginning July 1, 1998, and phased in for all certified home health aides by June 30, 2000.

(e) The use of fingerprint live scan technology implemented by the Department of Justice by the year 1999 shall be used by the Department of Justice to generate timely and accurate positive fingerprint identification prior to home health aide certification.

(f) The department shall develop procedures to ensure that any licensee, direct care staff, or certificate holder for whom a criminal record has been obtained pursuant to this section or Section 1265.6 or 1338.5 shall not be required to obtain multiple criminal record clearances.

(g) If the department receives a fingerprint card from a certified home health aide 60 days prior to the expiration of the certified health aide's certification and the department has received no response from the Department of Justice, or if the department is experiencing a delay in processing the renewal of the certified home health aide's certification at the time of the expiration of the certified home health aide's certification, the department may extend the expiration of the certified home health aide's certification for 60 days. This provision shall expire August 1, 2001.

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.

SEC. 9. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure the health and safety of patients in care facilities by making revisions to existing law at the earliest possible time to allow for consistency and efficiency in the implementation of fingerprinting of caregivers in California, it is necessary that this act take effect immediately.

CHAPTER 899

An act to add Section 7110 to the Public Contract Code, relating to child support.

[Approved by Governor September 27, 1998. Filed with Secretary of State September 28, 1998.]

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

SECTION 1. This act shall be known as the Child Support Compliance Act of 1998.

SEC. 2. The Legislature finds and declares:

(a) In this state, more than 3,000,000 children do not receive the child support payments that they are entitled to receive.

(b) Only 14 percent of eligible children receive child support payments, which is six percentage points below the national average.

(c) The average California family's collection of child support is only three hundred sixty-two dollars ($362) per month, which is approximately 35 percent below the national average of five hundred sixty-five dollars ($565) per month.

(d) California spends one dollar ($1) in administrative costs for every two dollars and seventeen cents ($2.17) collected in child support payments.

(e) Nonpayment of child support is the leading cause of both childhood poverty and welfare dependency in the United States. The many thousands of dollars of unpaid child support are an enormous social problem that threatens the welfare of children and increases the burden on state taxpayers to provide social services for these children.

(f) It is the policy of this state that anyone who benefits financially from or through the state shall be in compliance with his or her court-ordered child support obligations.

SEC. 3. Section 7110 is added to the Public Contract Code, to read:

7110. (a) It is the policy of this state that anyone who enters into a contract with a state agency shall recognize the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code.

(b) Every written contract in excess of one hundred thousand dollars ($100,000) executed between a contractor and a state agency shall contain the following:

(1) An acknowledgment by the contractor of the policy of the state set forth in subdivision (a).

(2) An acknowledgment by the contractor that to the best of its knowledge it is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the Employment Development Department.

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CHAPTER 900

An act to amend Section 11166.1 of the Penal Code and to amend Section 317 of the Welfare and Institutions Code, relating to child abuse.

[Approved by Governor September 27, 1998. Filed with Secretary of State September 28, 1998.]

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

SECTION 1. Section 11166.1 of the Penal Code is amended to read:

11166.1. (a) When a child protective agency receives either of the following, it shall, within 24 hours, notify the licensing office with jurisdiction over the facility:

(1) A report of abuse alleged to have occurred in facilities licensed to care for children by the State Department of Social Services.

(2) A report of the death of a child who was, at the time of death, living at, enrolled in, or regularly attending a facility licensed to care for children by the State Department of Social Services, unless the circumstances of the child's death are clearly unrelated to the child's care at the facility.

The child protective agency shall send the licensing agency a copy of its investigation and any other pertinent materials.

(b) Any employee of a child protective agency who has knowledge of, or observes in his or her professional capacity or within the scope of his or her employment, a child in protective custody whom he or she knows or reasonably suspects has been the victim of child abuse shall, within 36 hours, send or have sent to the attorney who represents the child in dependency court, a copy of the suspected child abuse and neglect report prepared for the court in accordance with Section 11166 of the Penal Code. The child protective agency shall maintain a copy of the written report. All information requested by the attorney for the child or the child's guardian ad litem shall be provided by the child protective agency within 30 days of the request.

SEC. 2. Section 317 of the Welfare and Institutions Code is amended to read:

317. (a) When it appears to the court that a parent or guardian of the minor desires counsel but is presently financially unable to afford and cannot for that reason employ counsel, the court may appoint counsel as provided in this section.

(b) When it appears to the court that a parent or guardian of the minor is presently financially unable to afford and cannot for that reason employ counsel, and the minor has been placed in out-of-home care, or the petitioning agency is recommending that the minor be placed in out-of-home care, the court shall appoint

counsel, unless the court finds that the parent or guardian has made a knowing and intelligent waiver of counsel as provided in this section.

(c) In any case in which it appears to the court that the minor would benefit from the appointment of counsel the court shall appoint counsel for the minor as provided in this section. A primary responsibility of any counsel appointed to represent a minor pursuant to this section shall be to advocate for the protection, safety, and physical and emotional well-being of the minor. Counsel for the minor may be a county counsel, district attorney, public defender, or other member of the bar, provided that the counsel does not represent another party or county agency whose interests conflict with the minor's. The fact that the district attorney represents the minor in a proceeding pursuant to Section 300 as well as conducts a criminal investigation or files a criminal complaint or information arising from the same or reasonably related set of facts as the proceeding pursuant to Section 300 is not in and of itself a conflict of interest. The court shall determine if representation of both the petitioning agency and the minor constitutes a conflict of interest. If the court finds there is a conflict of interest, separate counsel shall be appointed for the minor. The court may fix the compensation to be paid by the county for the services of appointed counsel, if counsel is not a county counsel, district attorney, public defender or other public attorney.

(d) The counsel appointed by the court shall represent the parent, guardian, or minor at the detention hearing and at all subsequent proceedings before the juvenile court. Counsel shall continue to represent the parent or minor unless relieved by the court upon the substitution of other counsel or for cause. The representation shall include representing the parent or the minor in termination proceedings and in those proceedings relating to the institution or setting aside of a legal guardianship.

(e) The counsel for the minor shall be charged in general with the representation of the minor's interests. To that end, the counsel shall make or cause to have made any further investigations that he or she deems in good faith to be reasonably necessary to ascertain the facts, including the interviewing of witnesses, and he or she shall examine and cross-examine witnesses in both the adjudicatory and dispositional hearings. He or she may also introduce and examine his or her own witnesses, make recommendations to the court concerning the minor's welfare, and participate further in the proceedings to the degree necessary to adequately represent the minor. In any case in which the minor is four years of age or older, counsel shall interview the minor to determine the minor's wishes and to assess the minor's well-being, and shall advise the court of the minor's wishes. Counsel for the minor shall not advocate for the return of the minor if, to the best of his or her knowledge, that return conflicts with the protection and safety of the minor. In addition

counsel shall investigate the interests of the minor beyond the scope of the juvenile proceeding and report to the court other interests of the minor that may need to be protected by the institution of other administrative or judicial proceedings. The attorney representing a child in a dependency proceeding is not required to assume the responsibilities of a social worker and is not expected to provide nonlegal services to the child. The court shall take whatever appropriate action is necessary to fully protect the interests of the minor.

(f) Notwithstanding any other law, counsel shall be given access to all records relevant to the case which are maintained by state or local public agencies. All information requested from a child protective agency regarding a child who is in protective custody, or from a child's guardian ad litem, shall be provided to the child's counsel within 30 days of the request. Counsel shall be given access to records maintained by hospitals or by other medical or nonmedical practitioners or by child care custodians, in the manner prescribed by Section 1158 of the Evidence Code.

(g) In a county of the third class, if counsel is to be provided to a minor at county expense other than by counsel for the agency, the court shall first utilize the services of the public defender prior to appointing private counsel, to provide legal counsel. Nothing in this subdivision shall be construed to require the appointment of the public defender in any case in which the public defender has a conflict of interest. In the interest of justice, a court may depart from that portion of the procedure requiring appointment of the public defender after making a finding of good cause and stating the reasons therefor on the record.

(h) In a county of the third class, if counsel is to be appointed for a parent or guardian at county expense, the court shall first utilize the services of the alternate public defender, prior to appointing private counsel, to provide legal counsel. Nothing in this subdivision shall be construed to require the appointment of the alternate public defender in any case in which the public defender has a conflict of interest. In the interest of justice, a court may depart from that portion of the procedure requiring appointment of the alternate public defender after making a finding of good cause and stating the reasons therefor on the record.

SEC. 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 901

An act to amend Sections 15365.53, 15365.55, and 15365.57 of the Government Code, relating to employment services.

[Approved by Governor September 27, 1998. Filed with Secretary of State September 28, 1998.]

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

SECTION 1. Section 15365.53 of the Government Code is amended to read:

15365.53. (a) The fund is intended to provide flexible funding for local job creation initiatives whenever possible, using, rather than duplicating, existing resources. Notwithstanding Section 13340 of the Government Code, the fund is hereby continuously appropriated without regard to fiscal years for the purposes of this chapter. The Treasurer shall invest moneys not needed to meet current obligations incurred pursuant to this chapter.

(b) Moneys in the fund shall be used by a recipient to either develop a strategic plan, in an amount not to exceed 50 percent of the recipient's allocation or two hundred fifty thousand dollars ($250,000), whichever is less, or to implement initiatives consistent with the plan, including, but not limited to, all of the following:

(1) Planning and coordination activities that lead to better local linkages between strategic economic planning and development of education and training curricula relevant to jobs that will exist locally.

(2) Packaging economic development and community development projects in a manner that can utilize capital financing mechanisms, such as the California Infrastructure and Economic Bank provided for pursuant to Chapter 2 (commencing with Section 63020) of Division 1 of Title 6.7.

(3) Development of localized labor market information that enables placement of recipients of and under Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code in currently available, as well as future, jobs.

(4) Assistance in developing economic development strategies for business expansion and location opportunities, including work force preparation and other local training services for employees.

(5) Targeting economic development and job creation activities to emerging or growth industry clusters in the local area.

(6) Expansion of technical assistance to small business and manufacturers for activities, such as those designed to make business operations more economical or competitive, while providing jobs for welfare recipients.

(7) Permit streamlining services.

(8) One-stop centers for small business financing to coordinate funding resources for business expansion.

(9) Establishment of small business incubators.

(10) Activities to support the use of intermediary employers.

(11) Support of microenterprise activities.

(12) Establishment and support of neighborhood development corporations pursuant to Section 15365.54.

(13) Matching of seed capital funds with private capital for community development projects.

(14) Planning and coordination activities that lead to better local linkages between job creation activities and implementation of the welfare-to-work grant program created by the federal Balanced Budget Act of 1997 (Public Law 105-33).

(c) Interest earnings may be used by the agency to offset administrative costs.

SEC. 2. Section 15365.55 of the Government Code is amended to read:

15365.55. For the purposes of moneys appropriated to the fund, in its first year of operation, the agency shall operate the program in the following manner:

(a) The agency shall issue guidelines for local job creation plans for CalWORKs participants to counties within 30 days after the operative date of this chapter or November 1, 1997, whichever is later. These guidelines shall include only minimum plan requirements, and shall encourage local creativity and flexibility in developing local employment opportunities for welfare recipients or those at risk of becoming welfare recipients.

(b) County boards of supervisors or county joint powers authorities shall be the applicants for and the recipients of moneys allocated pursuant to this chapter. Each county board of supervisors that elects to apply for job creation funds shall appoint or designate a planning group to prepare a grant application and county resolution. The application shall include the scope of work, a timeline, a budget, and performance standards. The resolution shall be approved by the board of supervisors and submitted to the agency within 120 days after the guidelines are issued.

(c) If a county board of supervisors does not submit its resolution within 120 days, and grant application within 180 days, that county's allocation shall become available to all counties on a competitive basis. These grants shall be awarded based on criteria developed by the agency.

(d) Upon receipt of a grant application and county resolution the agency shall, within 60 days, approve the application and allocate job

creation funds to the board of supervisors or notify the county of additional specific information needed to gain plan approval. Once any additional information is provided, the agency shall respond back to the county within 30 days.

(e) Subject to subdivision (f), moneys shall be distributed so as to ensure that each county receives not less than fifty thousand dollars ($50,000). The remainder shall be distributed to counties based on a formula that gives two-thirds weight, when compared to 1996 average monthly statewide totals, to the relative number of adult recipients of aid under Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code in that county, and one-third weight, when compared to 1996 average monthly statewide totals, to the relative number of unemployed persons in the county.

(f) Each county shall receive a minimum of fifty thousand dollars ($50,000). Each county shall be required to identify a comprehensive group of local stakeholders to either develop a strategic plan or initiate job creation activities that can utilize, to the maximum extent possible, existing resources to target job creation opportunities for recipients of aid under Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code in the county. The stakeholders shall include, but not be limited to, local governments, including the county welfare department, private business associations and employer groups, community-based organizations, community development corporations, economic development organizations, the nonprofit sector, advocates for recipients and low-income families, and the local work force preparation community. Whenever possible, existing local partnerships in which a significant number of the stakeholders are represented may be expanded to serve as the local welfare-to-work job creation task force.

(g) The agency shall disburse to each county 25 percent of the county's allocation under this section upon execution of a completed grant agreement. The resolution or grant application shall do at least the following:

(1) Designate a lead local economic development agency to act as the coordinator of the Welfare-to-Work Job Creation Task Force. Whenever possible, this lead agency shall be an existing public or nonprofit agency with a proven record of expertise and accomplishments in economic or community development.

(2) Provide an outline and timetable for the development of a strategic plan for the implementation of initiatives for recipients of aid under Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code.

(3) Identify the stakeholders who will participate in the public process of strategic planning.

(h) The agency shall disburse 50 percent of the county's allocation under this section on a cost reimbursement basis for work performed

pursuant to the grant agreement. The remainder of the county's allocation shall be disbursed when the agency has verified that job creation programs have been implemented that can reasonably lead to the creation of a substantial number of jobs needed for employment of CalWORKs recipients and when the terms of the grant agreement have been met.

(i) Any funds appropriated in the annual Budget Act for the 1998–99 fiscal year to support this program shall be used as follows:

(1) Each county shall receive no less than fifty thousand dollars ($50,000) to support activities consistent with their approved plans. An amount not to exceed five million dollars ($5,000,000) shall be allocated based on criteria established in subdivision (e), adjusted to 1997 data.

(2) If additional funds are appropriated in the annual Budget Act for the 1998–99 fiscal year in excess of five million dollars ($5,000,000), an amount not to exceed one million five hundred thousand dollars ($1,500,000) shall be used to establish a state incentive grant program to support at least three, but not more than five, job creation challenge grants, one or more of which shall address the job creation needs of rural counties. The agency shall establish criteria consistent with the objectives of this program, including, but not limited to, activities designed to address the special needs of small business job creation, partnerships between community development and economic development activities to benefit areas with high concentrations of Temporary Assistance to Needy Families (TANF) recipients and unemployment, and job creation activities designed to increase career pathways for working poor to enhance their financial stability and independence. The grant process shall function through lead agencies designated in each county.

SEC. 3. Section 15365.57 of the Government Code is amended to read:

15365.57. (a) All moneys in the fund that were appropriated in annual Budget Acts prior to the 1998–99 annual Budget Act, and that have not been disbursed to recipients by June 30, 2002, shall revert to the General Fund.

(b) All moneys in the fund that are appropriated in the annual Budget Act of 1998–99 or in subsequent annual Budget Acts shall not be subject to subdivision (a), but shall be subject to all applicable administrative and fiscal provisions relating to budget appropriations and therefore shall not be considered as continuously appropriated unless expressly authorized in a subsequently enacted statute.

SEC. 4. Any contract entered into pursuant to Item 2920-001-0001 (Trade and Commerce Agency) of the Budget Act of 1998-99, relative to expenditures of the two hundred thousand dollars ($200,000) provided from the General Fund for purposes of the California Economic Strategy Panel, shall not be subject to Section

10295 and Sections 10335 to 10382, inclusive, of the Public Contract Code.

CHAPTER 902

An act to amend Sections 8351, 8353, 8354, 8355, 8357, and 8358 of, and to add Section 8358.5 to, the Education Code, to amend Section 17002 of the Unemployment Insurance Code, to amend Sections 10072, 10532, 10544.1, 10980, 11004, 11008.135, 11157, 11157.5, 11201, 11250.4, 11265.2, 11320.1, 11320.3, 11320.31, 11322.65, 11322.8, 11323.2, 11323.4, 11324.6, 11324.7, 11324.8, 11325.1, 11325.21, 11325.22, 11325.23, 11325.8, 11326, 11327.8, 11328.8, 11331, 11331.5, 11331.7, 11333.5, 11333.7, 11334.2, 11334.7, 11454, 11454.5, 11454.6, 11477, 11495.15, 14132.90, 15200, 18242, 18244, 18245, 18246, 18904, and 18904.1 of, to add Sections 10850.31, 11450.16, and 15204.9 to, to repeal Sections 11267 and 11334 of, and to repeal and add Section 11008.13 of, the Welfare and Institutions Code, relating to CalWORKs, and making an appropriation therefor.

[Approved by Governor September 27, 1998. Filed with Secretary of State September 28, 1998.]

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

SECTION 1. Section 8351 of the Education Code, as amended by Section 4 of Assembly Bill 2779 of the 1997–98 Regular Session, is amended to read:

8351. (a) The county welfare department shall manage the first stage during which a family shall receive a child care subsidy for any legal care chosen by the parent. The first stage begins upon the entry of a person into the program prescribed by Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code.

(b) A county shall move recipients out of this first response stage as quickly as possible after the county determines that the need for child care is stable. A recipient may be served in this stage for a maximum of six months. The six-month time limit may be extended if the county determines that the recipient's situation is too unstable to be shifted to the second stage or if no funds are available to provide child care services in the second stage.

(c) Former CalWORKs recipients who cannot be transitioned from the first stage of child care because no funded slot is available are eligible to receive the first stage and any subsequent stage two child care services for up to a total of 24 months after they leave cash aid, or until they are otherwise ineligible within that 24-month period. Family size and income for purposes of determining

eligibility and family fee shall be determined pursuant to Sections 8263 and 8263.1.

(d) The county welfare department shall also begin the first stage of child care when an individual who applies for aid under the program described in Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code is participating as a volunteer pursuant to Article 3.2 (commencing with Section 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code.

(e) A county may contract with public or private child care providers to provide any or all of the services during the first stage. If the county welfare department elects to contract with any child care provider that is also under contract with the State Department of Education, these contracts shall be consistent with state law.

SEC. 2. Section 8353 of the Education Code, as amended by Section 5 of Assembly Bill 2779 of the 1997–98 Regular Session, is amended to read:

8353. (a) The second stage of child care begins when the county determines that the recipient's work or approved work activity is stable or when a recipient is transitioning off of aid and child care is available through a local stage two program. Second stage child care may be provided to a family who elects to receive a lump-sum diversion payment or diversion services under Section 11266.5 of the Welfare and Institutions Code when a funded space is not immediately available for the family in third stage. The local stage two agency shall assist in moving families to stage three as quickly as feasible. Former CalWORKs recipients are eligible to receive child care services in stage one and stage two for up to a total of no more than 24 months after they leave cash aid, or until they are otherwise ineligible within that 24-month period. Family size and income for purposes of determining eligibility and calculating the family fee shall be determined pursuant to Sections 8263 and 8263.1. A family leaving cash aid under the CalWORKS program shall receive up to two years of child care, if otherwise eligible, as needed to continue the family's employment. The provision of the two-year time limit is not intended to limit eligibility for child care under Section 8354.

(b) The second stage shall be administered by agencies contracting with the State Department of Education. These contractors may be either agencies that have an alternative payment contract pursuant to Section 8220.1 or county welfare departments that choose to administer this stage in order to continue to provide child care services for recipients or former recipients of aid. If the county chooses to contract with the department to provide alternative payment services, this contract shall not displace, or result in the reduction of an existing contract of, a current alternative payment program.

SEC. 3. Section 8354 of the Education Code, as amended by Section 6 of Assembly Bill 2779 of the 1997–98 Regular Session, is amended to read:

8354. (a) The third stage of child care begins when a funded space is available. CalWORKs recipients are eligible for the third stage of child care. Persons who received a lump-sum diversion payment or diversion services and former CalWORKs participants are eligible if they have an income that does not exceed 75 percent of the state median income. The third stage shall be administered by programs contracting with the State Department of Education. Parents' eligibility for child care and development services will be governed by Section 8263 and regulations adopted by the State Department of Education.

(b) In order to move welfare recipients and former recipients from their relationship with county welfare departments to relationships with institutions providing services to working families, it is the intent of the Legislature that families that are former recipients of aid, or are transitioning off aid, receive their child care assistance in the same fashion as other low-income working families. Therefore, it is the intent of the Legislature that families no longer rely on county welfare departments to obtain child care subsidies beyond the time they are receiving other services from the welfare department.

(c) A county welfare department shall not administer the third stage of child care for CalWORKs recipients except to the extent to which it delivered those services to families receiving, or within one year of having received, Aid to Families with Dependent Children prior to the enactment of this section.

(d) This article does not preclude county welfare departments from operating an alternative payment program under contract with the State Department of Education to serve families referred by child protective services.

SEC. 5. Section 8357 of the Education Code is amended to read:

8357. (a) The cost of child care services provided under this article shall be governed by regional market rates. Recipients of child care services provided pursuant to this article shall be allowed to choose the child care services of licensed child care providers or child care providers who are, by law, not required to be licensed, and the cost of that child care shall be reimbursed by counties or agencies that contract with the State Department of Education if the cost is within the regional market rate. For purposes of this section, "regional market rate" means care costing no more than 1.5 market standard deviations above the mean cost of care for that region.

(b) Reimbursement to child care providers shall not exceed the fee charged to private clients for the same service.

(c) Reimbursement shall not be made for child care services when care is provided by parents, legal guardians, or members of the assistance unit.

(d) A child care provider located on an Indian reservation or rancheria and exempted from state licensing requirements shall meet applicable tribal standards.

(e) For purposes of this section, "reimbursement" means a direct payment to the provider of child care services, including license exempt-providers. If care is provided in the home of the recipient, payment may be made to the parent as the employer, and the parent shall be informed of his or her concomitant legal and financial reporting requirements. To allow time for the development of the administrative systems necessary to issue direct payments to providers, for a period not to exceed six months from the effective date of this article, a county or an alternative payment agency contracting with the State Department of Education may reimburse the cost of child care services through a direct payment to a recipient of aid rather than to the child care provider.

(f) Counties and alternative payment programs shall not be bound by the rate limits described in subdivision (a) when there are, in the region, no more than two child care providers of the type needed by the recipient of child care services provided under this article.

SEC. 6. Section 8358 of the Education Code, as amended by Section 7 of Assembly Bill 2779 of the 1997–98 Regular Session, is amended to read:

8358. (a) By January 31, 1998, the State Department of Education and the State Department of Social Services shall design a form for license-exempt child care providers to use for certifying health and safety requirements to the extent required by federal law. Until the form is adopted, the information required pursuant to Section 11324 of the Welfare and Institutions Code shall continue to be maintained by the county welfare department or contractor, as appropriate.

(b) By January 31, 1998, the State Department of Education and the State Department of Social Services shall do all of the following:

(1) Design a standard process for complaints by parents about the provision of child care that is exempt from licensure.

(2) Design, in consultation with local planning councils, a single application for all child care programs and all families.

(3) Present recommendations to the Legislature on ways to consolidate state and federal child care programs.

(c) (1) County welfare departments and alternative payment programs shall encourage all providers who are licensed or who are exempt from licensure and who are providing care under Section 8351, 8353, or 8354, to secure training and education in basic child development.

(2) Child care provider job training provided to CalWORKs recipients that is funded by either the State Department of Education or the State Department of Social Services shall include information on becoming a licensed child care provider.

(d) The State Department of Education shall increase consumer education and consumer awareness activities so that parents will have the information needed to seek child care of high quality. High quality child care shall include both licensed and license-exempt care.

SEC. 7. Section 8358.5 is added to the Education Code, to read:

8358.5. Notwithstanding any other confidentiality requirement, the government or private agency administering subsidized child care services shall share information necessary for the administration of the child care programs pursuant to this article and the CalWORKs program pursuant to Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code, for the time period for which the person receives child care.

SEC. 8. Section 17002 of the Unemployment Insurance Code is amended to read:

17002. In carrying out the provisions of this division, the department shall conduct activities including, but not limited to, the following:

(a) Establish a council of corporate executives consisting of 13 members drawn from the business community including, but not limited to, retired or former chief executive officers of major California corporations. Seven members shall be appointed by the Governor, three shall be appointed by the Senate Committee on Rules, and three shall be appointed by the Speaker of the Assembly. Appointments shall be made no later than January 31, 1998. This council shall provide ongoing advice and assistance to the department in recruiting private employers to hire recipients of aid.

(b) In consultation with the council described in subdivision (a), establish a clearinghouse for information on the Internet or other forms of toll-free communication for private sector employers to obtain information about assistance and resources for hiring CalWORKs recipients and to register their pledges to assist the state in finding the jobs necessary to meet the local welfare-to-work goals throughout the state.

(c) In consultation with the council described in subdivision (a), provide a forum for leaders in the faith-based communities, as well as other civic leaders, to assist the state in promoting welfare-to-work goals as part of the civic duty of their constituents.

(d) Report to the Legislature during the annual budget process regarding the implementation of this division and the results achieved.

SEC. 8.5. Section 10072 of the Welfare and Institutions Code is amended to read:

10072. The electronic benefits transfer system required by this chapter shall be designed to do, but not be limited to, all of the following:

(a) To the extent permitted by federal law and the rules of the program providing the benefits, recipients who are required to

receive their benefits using an electronic benefits transfer system shall be permitted to gain access to the benefits in any part of the state where electronic benefits transfers are accepted. All electronic benefits transfer systems in this state shall be designed to allow recipients to gain access to their benefits by using every other electronic benefits transfer system.

(b) To the maximum extent feasible, electronic benefits transfer systems shall be designed to be compatible with the electronic benefits transfer systems in other states.

(c) All reasonable measures shall be taken in order to ensure that recipients have access to electronically issued benefits through systems such as automated teller machines, point-of-sale devices, or other devices that accept electronic benefits transfer transactions.

(d) The system shall provide for reasonable access to benefits to recipients who demonstrate an inability to use, an electronic benefits transfer card or other aspect of the system because of disability, language, lack of access, or other barrier. These alternative methods shall conform to the requirements of the Americans with Disabilities Act (42 U.S.C. Sec. 12101, et seq.), including reasonable accommodations for recipients who, because of physical or mental disabilities, are unable to operate or otherwise make effective use of the electronic benefits transfer system.

(e) The system shall permit a recipient the option to choose a personal identification number, also known as a "pin" number, to assist the recipient to remember his or her number in order to allow access to benefits. Whenever an institution, authorized representative, or other third party not part of the recipient household or assistance unit has been issued an electronic benefits transfer card, either in lieu of, or in addition to, the recipient, the third party shall have a separate card and personal identification number. At the option of the recipient, he or she may designate whether restrictions apply to the third party's access to the recipient's benefits. At the option of the recipient head of household or assistance unit, the county shall provide multiple electronic benefits transfer cards to adult members enabling them to access benefits.

(f) The system shall have a 24-hour per day toll-free telephone hotline for the reporting of lost or stolen cards and that will provide recipients with information on how to have the card and personal identification number replaced.

(g) A recipient shall not incur any loss of electronic benefits after reporting his or her electronic benefits transfer card or personal identification number has been lost or stolen. The system shall provide for the prompt replacement of lost or stolen electronic benefits transfer cards and personal identification numbers. Electronic benefits for which the case was determined eligible and that were not withdrawn by transactions using an authorized

personal identification number for the account shall also be promptly replaced.

(h) Electronic benefits transfer system consumers shall be informed on how to use electronic benefits transfer cards and how to protect them from misuse.

(i) Procedures shall be developed for error resolution.

(j) No fee shall be charged by the state, a county, or an electronic benefits processor certified by the state to retailers participating in the electronic benefits transfer system.

(k) Except for food stamp transactions, a recipient may be charged a fee, not to exceed the amount allowed by applicable state and federal law and customarily charged to other customers, for cash withdrawal transactions that exceed four per month.

SEC. 9. Section 10532 of the Welfare and Institutions Code is amended to read:

10532. The department and the counties shall implement the provisions of the CalWORKs program in the following manner:

(a) The department shall issue a planning allocation letter and county plan instructions to the counties within 30 days of the enactment of the CalWORKs program.

(b) (1) Each county shall submit a plan for implementation of the CalWORKs program within four months of the issuance of the planning allocation letter by the department. A county may begin implementation of its plan upon submission of the plan to the department or the effective date of the CalWORKs program, whichever is later.

(2) Within 30 days of receipt of a county plan, the department shall either certify that the plan includes the description of the elements required by Section 10531 and that the descriptions are consistent with the requirements of state law and, to the extent applicable, federal law or notify the county that the plan is not complete or consistent stating the reasons therefor.

(3) If a county is notified that its plan is not complete or consistent, the county shall, within 30 days, resubmit a revised plan to the department for certification.

(c) (1) A county shall begin enrolling all new applicants for aid under this chapter in the county's welfare-to-work program no later than six months from the date of issuance of the planning allocation letter references in subdivision (a) or two months after the certification of the county plan, whichever is later.

(2) A county shall enroll all recipients of aid under this chapter who were receiving aid in the month prior to the implementation date for new applicants specified in paragraph (1) no later than January 1, 1999. For recipients under this paragraph, the time limit in subdivision (a) of Section 11454 shall commence on the date the recipient signs, or refuses, without good cause, to sign, a welfare-to-work plan.

(d) Funds remaining at the end of the 1997–98 fiscal year or the 1998–99 fiscal year from the funds provided to a county in those years pursuant to Section 15204.2 shall be available to a county until July 1, 2000, and may be expended only for the purposes set forth in Section 15204.2.

SEC. 9.5. Section 10544.1 of the Welfare and Institutions Code is amended to read:

10544.1. It is the intent of the Legislature to provide counties with 100 percent of the grant savings as defined in subdivisions (a) to (e), inclusive.

(a) In order to provide counties with additional incentive to move CalWORKs recipients to employment, each county shall receive 75 percent of the state share of savings, including federal funds under the Temporary Assistance for Needy Families block grant, resulting from the following outcomes:

(1) Recipients exiting the program due to employment that has lasted a minimum of six months.

(2) Increased earnings by recipients due to employment.

(3) Diversion of applicants from the program pursuant to Section 11266.5 for six months in addition to the number of months equivalent to the diversion payment.

(b) For purposes of subdivision (a), the department, in consultation with the steering committee under Section 10544.317, shall determine the method for valuing the outcomes to determine county share of savings.

(c) The department shall allocate the remaining 25 percent of the state share of savings resulting from the outcomes specified in subdivision (a) to counties that have performed in a manner worthy of recognition based on standards developed by the department in consultation with the counties.

(d) The funds allocated to counties pursuant to subdivisions (a) and (b) that are federal Temporary Assistance for Needy Families block grant funds shall be used only for purposes for which these federal funds may be used. The funds that are state general fund dollars shall be expended for purposes directly connected to the CalWORKs program and countable towards the state maintenance of effort level required by federal law, unless the Director of Finance determines that all or part of the funds are not needed in that fiscal year to meet the required maintenance of effort. Any unexpended funds may be retained by each county for expenditure in subsequent fiscal years for purposes consistent with this subdivision.

(e) It is the intent of the Legislature that the provisions of this section regarding the allocation of incentives shall be revised by subsequent enactment of legislation based upon the recommendations of the steering committee established pursuant to Section 10544.317.

SEC. 10. Section 10850.31 is added to the Welfare and Institutions Code, to read:

10850.31. (a) For the CalWORKs and Food Stamp Programs only, notwithstanding any other provision of law, the address, social security number, and, if available, photograph of any applicant or recipient shall be made available, on request, to any federal, state, or local law enforcement officer if the officer furnishes the county welfare department with the name of the applicant or recipient and notifies the county welfare department that the following apply:

(1) Any one of the following applies:

(A) The applicant or recipient is fleeing to avoid prosecution, custody, or confinement after conviction, for a crime that, under the law of the place the applicant is fleeing, is a felony, or, in the case of New Jersey, a high misdemeanor.

(B) The applicant or recipient is violating a condition of probation or parole imposed under state or federal law.

(C) The applicant or recipient has information that is necessary for the officer to conduct an official duty related to those issues stated in paragraph (1) or (2).

(2) Locating or apprehending the applicant or recipient is an official duty of the law enforcement officer.

(3) The request is being made in the proper exercise of an official duty.

(b) This section shall not authorize the release of a general list identifying individuals applying for or receiving public social services under the CalWORKs program or the Food Stamp Program.

(c) This section shall be implemented only to the extent permitted by federal law.

SEC. 11. Section 10980 of the Welfare and Institutions Code is amended to read:

10980. (a) Any person who, willfully and knowingly, with the intent to deceive, makes a false statement or representation or knowingly fails to disclose a material fact in order to obtain aid under the provisions of this division or who, knowing he or she is not entitled thereto, attempts to obtain aid or to continue to receive aid to which he or she is not entitled, or to receive a larger amount than that to which he or she is legally entitled, is guilty of a misdemeanor, punishable by imprisonment in the county jail for a period of not more than six months, a fine of not more than five hundred dollars ($500), or by both such imprisonment and fine.

(b) Any person who knowingly makes more than one application for aid under the provisions of this division with the intent of establishing multiple entitlements for any person for the same period or who makes an application for this aid for a fictitious or nonexistent person or by claiming a false identity for any person is guilty of a felony, punishable by imprisonment in the state prison for a period of 16 months, two years, or three years, a fine of not more than five thousand dollars ($5,000), or by both such imprisonment and fine, or by imprisonment in the county jail for a period of not more than one

year, or a fine of not more than one thousand dollars ($1,000), or by both such imprisonment and fine.

(c) Whenever any person has, by means of false statement or representation or by impersonation or other fraudulent device, obtained or retained aid under the provisions of this division for himself or herself or for a child not in fact entitled thereto, the person obtaining this aid shall be punished as follows:

(1) If the total amount of this aid obtained or retained is four hundred dollars ($400) or less, by imprisonment in the county jail for a period of not more than six months, a fine of not more than five hundred dollars ($500), or by both such imprisonment and fine.

(2) If the total amount of this aid obtained or retained is more than four hundred dollars ($400), by imprisonment in the state prison for a period of 16 months, two years, or three years, a fine of not more than five thousand dollars ($5,000), or by both such imprisonment and fine; or by imprisonment in the county jail for a period of not more than one year, or a fine of not more than one thousand dollars ($1,000), or by both such imprisonment and fine.

(d) Any person who knowingly uses, transfers, acquires, or possesses blank authorizations to participate in the federal Food Stamp Program in any manner not authorized by Chapter 10 (commencing with Section 18900) of Part 6 with the intent to defraud is guilty of a felony, punishable by imprisonment in the state prison for a period of 16 months, two years, or three years, a fine of not more than five thousand dollars ($5,000), or by both such imprisonment and fine.

(e) Any person who counterfeits or alters or knowingly uses, transfers, acquires, or possesses counterfeited or altered authorizations to participate in the federal Food Stamp Program or to receive food stamps or electronically transferred benefits in any manner not authorized by the Food Stamp Act of 1964 (Public Law 88-525 and all amendments made thereto) or the federal regulations pursuant to the act is guilty of forgery.

(f) Any person who fraudulently appropriates food stamps, electronically transferred benefits, or authorizations to participate in the federal Food Stamp Program with which he or she has been entrusted pursuant to his or her duties as a public employee is guilty of embezzlement of public funds.

(g) Whoever knowingly uses, transfers, sells, purchases, or possesses food stamps, electronically transferred benefits, or authorizations to participate in the federal Food Stamp Program in any manner not authorized by Chapter 10 (commencing with Section 18900), of Part 6, or by the federal Food Stamp Act of 1977 (Public Law 95-113 and all amendments made thereto) is:

(1) Guilty of a misdemeanor if the face value of the food stamp benefits or the authorizations to participate is four hundred dollars ($400) or less, and shall be punished by imprisonment in the county

jail for a period of not more than six months, a fine of not more than five hundred dollars ($500), or by both such imprisonment and fine.

(2) Guilty of a felony if the face value of the food stamps or the authorizations to participate exceeds four hundred dollars ($400), and shall be punished by imprisonment in the state prison for a period of 16 months, two years, or three years, a fine of not more than five thousand dollars ($5,000), or by both such imprisonment and fine or by imprisonment in the county jail for a period of not more than one year, or a fine of not more than one thousand dollars ($1,000), or by both such imprisonment and fine.

SEC. 12. Section 11004 of the Welfare and Institutions Code is amended to read:

11004. The provisions of this code relative to public social services for which state grants-in-aid are made to the counties shall be administered fairly to the end that all persons who are eligible and apply for such public social services shall receive the assistance to which they are entitled promptly, with due consideration for the needs of applicants and the safeguarding of public funds.

(a) Any applicant for, or recipient or payee of, such public social services shall be informed as to the provisions of eligibility and his or her responsibility for reporting facts material to a correct determination of eligibility and grant.

(b) Any applicant for, or recipient or payee of, such public social services shall be responsible for reporting accurately and completely within his or her competence those facts required of him or her pursuant to subdivision (a) and to report promptly any changes in those facts.

(c) Current and future grants payable to an assistance unit may be reduced because of prior overpayments. In cases where the overpayment was caused by agency error, grant payments shall be reduced by 5 percent of the maximum aid payment of the assistance unit. Grant payments to be adjusted because of prior overpayments because of any other reason shall be reduced by 10 percent of the maximum aid payments for the assistance unit. A recipient may have an overpayment adjustment in excess of the amounts allowable under this section if the recipient requests it.

(d) No determination of ineligibility shall be made retrospectively so as to result in an assessment of an overpayment in circumstances where there is a failure on the part of an applicant or recipient to perform an act constituting a condition of eligibility, if the failure is caused by an error made by a state agency or a county welfare department, and if the amount of the grant received by the applicant or recipient would not have been different had the act been performed.

(e) Prior to effectuating any reduction of current grants to recover past overpayments, the recipient shall be advised of the proposed reduction and of his or her entitlement to a hearing on the propriety of the reduction.

(f) If the department determines after a hearing that an overpayment has occurred, the county providing the public social services shall seek to recover in accordance with subdivision (c) the full amount of the overpayment to the assistance unit, including any amount paid while the hearing process was pending. Such adjustment shall be permitted concurrently with any suit for restitution, and recovery of overpayment by adjustment shall reduce by the amount of such recovery the extent of liability for restitution.

(g) If the individual is no longer receiving aid under Chapter 2 (commencing with Section 11200) recovery of overpayments received under that chapter shall not be attempted where the outstanding overpayments are less than thirty-five dollars ($35). Where the overpayment amounts owed are thirty-five dollars ($35) or more, reasonable cost-effective efforts at collection shall be implemented. Reasonable efforts shall include notification of the amount of the overpayment and that repayment is required. The department shall define reasonable cost-effective collection methods. In cases involving fraud, every effort shall be made to collect the overpayments regardless of the amount.

(h) If the individual responsible for the overpayment to the assistance unit is no longer eligible for public social services or if he or she becomes a member of another assistance unit, recoupment of overpayments shall be made against the individual or his or her present assistance unit, or both.

(i) Where an overpayment has been made to an assistance unit which is no longer receiving public social services, recovery shall be made by appropriate action under state law against the income or resources of the individual responsible for the overpayment or against the family.

(j) No civil or criminal action may be commenced against any person based on alleged unlawful application for or receipt of public social services, where the case record of such person has been destroyed after the expiration of the four-year retention period pursuant to Section 10851.

(k) When an underpayment or denial of public social service occurs and as a result the applicant or recipient does not receive the amount to which he or she is entitled, the county shall provide public social services equal to the full amount of the underpayment unless prohibited by federal law. In cases that have both an underpayment and an overpayment, the underpayment shall be offset against the overpayment prior to correcting any remaining underpayment.

Any corrective payments made pursuant to this subdivision shall be disregarded in determining the income of the family and shall be disregarded in determining the resources of the family in the month the corrective payment is made and in the following month.

(*l*) This subdivision shall be applicable only to applicants, recipients and payees under Chapter 2 (commencing with Section 11200) of Part 3 of Division 9. Any suits to recover overpayments

described in subdivision (f) shall be brought on behalf of the county by the county counsel unless the board of supervisors delegates such duty to the district attorney by ordinance or resolution.

SEC. 13. Section 11008.13 of the Welfare and Institutions Code is repealed.

SEC. 14. Section 11008.13 is added to the Welfare and Institutions Code, to read:

11008.13. To the extent permitted by federal law and consistent with other provisions of this chapter, in determining the eligibility and amount of aid under this division for an alien for whom an affidavit of support was executed prior to December 19, 1997, the income and resources of the alien shall be deemed to include the income and resources of any person who had executed an affidavit of support on behalf of the alien and the spouse of that person as provided in Section 408 of the Social Security Act (42 U.S.C. Sec. 608) and any subsequent amendments thereto.

SEC. 15. Section 11008.135 of the Welfare and Institutions Code is amended to read:

11008.135. (a) Notwithstanding any other provision of law, in determining the eligibility and amount of aid for an alien under this division, the income and resources of the alien shall be deemed to include the income and resources of any person who has executed an affidavit of support on behalf of the alien and the spouse of that person as provided in Subtitle C (commencing with Section 421) of Title IV of Public Law 104-193, as amended by Public Law 104-208, and any subsequent amendments thereto, subject to any exceptions required by those provisions, including exceptions for indigents and battered spouses.

(b) As a condition of eligibility, the sponsored applicant or recipient shall provide information regarding the income and resources of any person, and the spouse of that person, who has executed an affidavit of support on behalf of the alien.

SEC. 16. Section 11157 of the Welfare and Institutions Code is amended to read:

11157. (a) Notwithstanding Section 11008, all lump-sum income received by an applicant or recipient shall be regarded as income in the month received except nonrecurring lump-sum social insurance payments, which shall include social security income, railroad retirement benefits, veteran's benefits, worker's compensation, and disability insurance.

(b) Except as otherwise provided in this part, for purposes of this chapter and Chapter 2 (commencing with Section 11200), "income" shall be deemed to be the same as applied under the Aid to Families with Dependent Children program on August 21, 1996, except that income that is received too infrequently to be reasonably anticipated, as exempted in federal food stamp regulations, shall be exempt from consideration. In addition, earnings from college work-study programs under Title IV of the federal Higher Education Act or

Article 18 (commencing with Section 69950) of Chapter 2 of Part 42 of the Education Code or college work-study program, as established in the annual Budget Act, for individuals receiving aid under Chapter 2 (commencing with Section 11200) shall be exempt from consideration as income.

SEC. 17. Section 11157.5 of the Welfare and Institutions Code is amended to read:

11157.5. The receipt of aid under Chapter 2 (commencing with Section 11200) shall not impose any limitation or restriction upon a recipient's right to sell, exchange, or change, the form of property holdings. However, a gift or any other transfer of assets, including income and resources, by a recipient for less than fair market value shall result in a period of ineligibility for aid under Chapter 2 (commencing with Section 11200) for the number of months, rounded down to the nearest whole number, that equals the quotient of the difference between the fair market value of the asset and the amount received for the asset divided by the standard of need applicable to the family under Section 11452. This section shall only apply to transfer of income or resources that would otherwise affect a recipient's eligibility for benefits or the amount of benefits to which he or she would be entitled.

SEC. 18. Section 11201 of the Welfare and Institutions Code is amended to read:

11201. For the purposes of this chapter, the following shall apply:

(a) "Unemployed parent" means a natural or adoptive parent with whom the child is living.

(b) A child for whom a parent is applying for assistance under this chapter shall be considered to be deprived of parental support or care due to the unemployment of his or her parent or parents when the parent has worked less than 100 hours in the preceding four weeks and meets the requirements concerning an unemployed parent in effect on August 21, 1996, as set forth in Section 233.100 of Title 45 of the Code of Federal Regulations except for the provisions of subparagraph (i) to (v), inclusive, of paragraph (3) of subsection (a) of that section.

(c) A family receiving aid under this chapter with a child who is considered to be deprived of parental support or care due to unemployment may continue to receive assistance regardless of the number of hours his or her parent works provided the family does not exceed the applicable gross or net income limits and is otherwise eligible for assistance.

SEC. 19. Section 11250.4 of the Welfare and Institutions Code is amended to read:

11250.4. Aid under this chapter shall not be payable to an assistance unit if a caretaker relative is, on the last day of the month, participating in a strike, unless the strike is necessitated by an imminent health and safety hazard or abnormally dangerous working conditions at the place of employment as determined by the

Division of Occupational Safety and Health, or a lockout as defined in Section 1132.8 of the Labor Code. For the purposes of this section, a strike necessitated by an imminent health and safety hazard or abnormally dangerous working condition shall last only so long as necessitated by the imminent hazard or abnormally dangerous working condition. If an individual other than a caretaker relative is participating in a strike, as defined in this section, on the last day of the month, subject to the exceptions and their limitations set forth in this section, that individual's needs shall not be included in determining the amount of aid payable to the assistance unit for the month during which the individual is participating in the strike on the last day of that month.

SEC. 20. Section 11265.2 of the Welfare and Institutions Code is amended to read:

11265.2. (a) The director shall implement, under this chapter and the Food Stamp Program (Chapter 10 (commencing with Section 18900) of Part 6), a demonstration program in up to six counties to test an alternative method of recipient reporting, as described in this section. The director shall seek federal approval, as necessary, to allow for participation in the Food Stamp Program in the demonstration program. The counties initially selected for participation under this section shall include small, medium, and large counties, but shall not include a county with a population in excess of 6,000,000.

(b) The demonstration program may operate for up to three years. After the first year of operation, the director shall evaluate the demonstration program and may continue, expand, or terminate the project. In addition, if, at any time after the first year of demonstration program operation, the director determines that the method is cost-effective and administratively efficient, the director may, notwithstanding Sections 11265 and 11265.1, implement the alternative method of recipient reporting pursuant to this section on a permanent, statewide basis.

(c) The alternative method of reporting to be used pursuant to this section shall provide for the following:

(1) The county shall redetermine the financial eligibility of each recipient every six months, and may, at the option of the county, conduct a full eligibility redetermination on an annual basis.

(2) A recipient shall report to the county any change in his or her household's monthly income or resources in excess of seventy-five dollars ($75), and any change in the composition of his or her household within 10 days after that change. Upon the report of any change in excess of seventy-five dollars ($75) or any change in the household composition, the county shall recalculate an assistance unit's grant level.

(3) Notwithstanding any other provision of law, in recalculating the amount of a recipients's grant pursuant to this section, changes in the grant amount shall be made on a prospective basis.

(4) The warrant provided to a recipient of aid under this chapter shall provide for an endorsement under penalty of perjury by a recipient indicating that all required changes in income, resources, and household composition have been reported. The warrant shall be accompanied by notification of recipient reporting responsibilities.

SEC. 21. Section 11267 of the Welfare and Institutions Code is repealed.

SEC. 22. Section 11320.1 of the Welfare and Institutions Code is amended to read:

11320.1. Subsequent to the commencement of the receipt of aid under this chapter, the sequence of employment related activities required of participants under this article, unless exempted under Section 11320.3, shall be as follows:

(a) Job search. Recipients shall, and applicants may, at the option of a county and with the consent of the applicant, receive orientation to the welfare-to-work program provided under this article, receive appraisal pursuant to Section 11325.2, and participate in job search and job club activities provided pursuant to Section 11325.22.

(b) Assessment. If employment is not found during the period provided for pursuant to subdivision (a), or at any time the county determines that participation in job search for the period specified in subdivision (a) of Section 11325.22 is not likely to lead to employment, the participant shall be referred to assessment, as provided for in Section 11325.4. Following assessment, the county and the participant shall develop a welfare-to-work plan, as specified in Section 11325.21. The plan shall specify the activities provided for in Section 11322.6 to which the participant shall be assigned, and the supportive services, as provided for pursuant to Section 11323.2, with which the recipient will be provided.

(c) Work activities. A participant who has signed a welfare-to-work plan pursuant to Section 11325.21 shall participate in work activities until he or she has received aid for the period specified in subdivision (a) of Section 11454. If, after the period specified in paragraph (1) of subdivision (a) of Section 11454, the participant has not obtained unsubsidized employment, the county may extend the welfare-to-work plan by up to six months if the county determines that the extension is likely to lead to unsubsidized employment or if local unemployment or other conditions in the local economy are such that employment is not available. If a recipient has received aid for the period specified in subdivision (a) of Section 11454 and returns to aid after a break in aid of at least one month, the county shall determine whether to require the recipient to participate in welfare-to-work activities or in community service.

(d) Community service.

(1) If a participant has received aid for the period specified in subdivision (a) of Section 11454, and the participant has not found unsubsidized employment sufficient to meet the hours of

participation required by Section 11322.8 and the county has certified that no job is available for that participant, the participant shall remain eligible for aid under this chapter only if he or she participates in community service activities pursuant to Section 11322.9.

(2) The county shall provide community service activities assignments as described in Section 11322.9.

(3) An individual may participate in community service activities until he or she has received aid for a total of 60 months.

SEC. 23. Section 11320.3 of the Welfare and Institutions Code is amended to read:

11320.3. (a) (1) Except as provided in subdivision (b) or if otherwise exempt, every individual, as a condition of eligibility for aid under this chapter, shall participate in welfare-to-work activities under this article.

(2) Individuals eligible under Section 11331.5 shall be required to participate in the Cal-Learn Program under Article 3.5 (commencing with Section 11331) during the time that article is operative, in lieu of the welfare-to-work requirements, and subdivision (b) shall not apply to that individual.

(b) The following individuals shall not be required to participate for so long as the condition continues to exist:

(1) An individual under 16 years of age.

(2) A child attending an elementary, secondary, vocational, or technical school on a full-time basis. A person who is 16 or 17 years of age, or a person described in subdivision (d) who loses this exemption, shall not requalify for the exemption by attending school as a required activity under this article.

(3) An individual who meets either of the following conditions:

(A) The individual is disabled as determined by a doctor's verification that the disability is expected to last at least 30 days and that it significantly impairs the recipient's ability to be regularly employed or participate in welfare-to-work activities, provided that the individual is actively seeking appropriate medical treatment.

(B) The individual is of advanced age.

(4) A nonparent caretaker relative who has primary responsibility for providing care for a child and is either caring for a child who is a dependent or ward of the court or caring for a child in a case in which a county determines the child is at risk of placement in foster care, and the county determines that the caretaking responsibilities are beyond those considered normal day-to-day parenting responsibilities such that they impair the caretaker relative's ability to be regularly employed or to participate in welfare-to-work activities.

(5) An individual whose presence in the home is required because of illness or incapacity of another member of the household and whose caretaking responsibilities impair the recipient's ability to be regularly employed or to participate in welfare-to-work activities.

(6) A parent or other relative who meets the criteria in subparagraph (A) or (B).

(A) (i) The parent or other relative has primary responsibility for personally providing care to a child six months of age or under, except that, on a case-by-case basis, and based on criteria developed by the county, this period may be reduced to the first 12 weeks after the birth or adoption of the child, or increased to the first 12 months after the birth or adoption of the child. An individual may be exempt only once under this clause.

(ii) An individual who received an exemption pursuant to clause (i) shall be exempt for a period of 12 weeks, upon the birth or adoption of any subsequent children, except that this period may be extended on a case-by-case basis to six months, based on criteria developed by the county.

(iii) In making the determination to extend the period of exception under clause (i) or (ii), the following may be considered:

(I) The availability of child care.

(II) Local labor market conditions.

(III) Other factors determined by the county.

(B) In a family eligible for aid under this chapter due to the unemployment of the principal wage earner, the exemption criteria contained in subparagraph (A) shall be applied to only one parent.

(7) A woman who is pregnant and for whom it has been medically verified that the pregnancy impairs her ability to be regularly employed or participate in welfare-to-work activities or the county has determined that, at that time, participation will not readily lead to employment or that a training activity is not appropriate.

(c) Any individual not required to participate may choose to participate voluntarily under this article, and end that participation at any time without loss of eligibility for aid under this chapter, if his or her status has not changed in a way that would require participation.

(d) (1) Notwithstanding subdivision (a), a custodial parent who is under 20 years of age and who has not earned a high school diploma or its equivalent, and who is not exempt or whose only basis for exemption is subparagraph (A) of paragraph (6) of subdivision (b), shall be required to participate solely for the purpose of earning a high school diploma or its equivalent. During the time that Article 3.5 (commencing with Section 11331) is operative, this subdivision shall only apply to a custodial parent who is 19 years of age.

(2) Section 11325.25 shall apply to a custodial parent who is 18 or 19 years of age and who is required to participate under this article.

(e) Notwithstanding paragraph (1) of subdivision (d), the county may determine that participation in education activities for the purpose of earning a high school diploma or equivalent is inappropriate for an 18 or 19 year old custodial parent only if that parent is reassigned pursuant to an evaluation under Section 11325.25, or, at appraisal is already in an educational or vocational

training program that is approvable as a self-initiated program as specified in Section 11325.23. If that determination is made, the parent shall be allowed to continue participation in the self-initiated program subject to Section 11325.23. During the time that Article 3.5 (commencing with Section 11331) is operative, this subdivision shall only apply to a custodial parent who is 19 years of age.

(f) A recipient shall be excused from participation for good cause when the county has determined there is a condition or other circumstance that temporarily prevents or significantly impairs the recipient's ability to be regularly employed or to participate in welfare-to-work activities. The county welfare department shall review the good cause determination for its continuing appropriateness in accordance with the projected length of the condition, or circumstance, but not less than every three months. The recipient shall cooperate with the county welfare department and provide information, including written documentation, as required to complete the review. Conditions that may be considered good cause include, but are not limited to, the following:

(1) Lack of necessary supportive services.

(2) In accordance with Article 7.5 (commencing with Section 11495), the applicant or recipient is a victim of domestic violence, but only if participation under this article is detrimental to or unfairly penalizes that individual or his or her family.

(3) Licensed or license-exempt child care for a child 10 years of age or younger is not reasonably available during the individual's hours of training or employment including commuting time, or arrangements for child care have broken down or have been interrupted, or child care is needed for a child who meets the criteria of subparagraph (C) of paragraph (1) of subdivision (a) of Section 11323.2, but who is not included in the assistance unit. For purposes of this paragraph, "reasonable availability" means child care that is commonly available in the recipient's community to a person who is not receiving aid and that is in conformity with the requirements of Public Law 104-193. The choices of child care shall meet either licensing requirements or the requirements of Section 11324. This good cause criterion shall include the unavailability of suitable special needs child care for children with identified special needs, including, but not limited to, disabilities or chronic illnesses.

SEC. 24. Section 11320.31 of the Welfare and Institutions Code is amended to read:

11320.31. No sanctions shall be applied for a failure or refusal to comply with program requirements for reasons related to employment, an offer of employment, an activity, or other training for employment including, but not limited to, the following reasons:

(a) The employment, offer of employment, activity, or other training for employment discriminates in terms of age, sex, race, religion, national origin, or physical or mental disability.

(b) The employment or offer of employment exceeds the daily or weekly hours of work customary to the occupation.

(c) The employment, offer of employment, activity, or other training for employment requires travel to and from the place of employment, activity, or other training and one's home that exceeds a total of two hours in round-trip time, exclusive of the time necessary to transport family members to a school or place providing care, or, when walking is the only available means of transportation, the round-trip is more than two miles, exclusive of the mileage necessary to accompany family members to a school or a place providing care. An individual who fails or refuses to comply with the program requirements based on this paragraph shall be required to participate in community service activities pursuant to Section 11322.9.

(d) The employment, offer of employment, activity, or other training for employment involves conditions that are in violation of applicable health and safety standards.

(e) The employment, offer of employment, or work activity does not provide for worker's compensation insurance.

(f) Accepting the employment or work activity would cause an interruption in an approved education or job training program in progress that would otherwise lead to employment and sufficient income to be self-supporting, excluding work experience or community service employment as described in subdivisions (d) and (j) of Section 11322.6 and Section 11322.9 or other community work experience assignments, except that a recipient may be required to engage in welfare-to-work activities to the extent necessary to meet the hours of participation required by Section 11322.8.

(g) Accepting the employment, offer of employment, or work activity would cause the individual to violate the terms of his or her union membership.

SEC. 25. Section 11322.65 of the Welfare and Institutions Code is amended to read:

11322.65. (a) Unless otherwise specified in this chapter, assignment to any activity otherwise authorized under this article shall be limited in any county to the number or percentage of participants specified under Section 407 of the federal Social Security Act (42 U.S.C. Sec. 607) and subsequent amendments thereto, unless the recipient is concurrently participating in any activities that will count for the required number of hours of participation under federal law.

(b) Subdivision (a) shall not apply if the statewide percentage, as determined by the department, is less than the limits described in federal law.

SEC. 26. Section 11322.8 of the Welfare and Institutions Code is amended to read:

11322.8. (a) Unless otherwise exempt, an adult recipient in a one-parent assistance unit shall participate in welfare-to-work activities for 20 hours each week beginning January 1, 1998, 26 hours

each week beginning July 1, 1998, and 32 hours each week beginning July 1, 1999, and thereafter. In no event shall the adult recipient participate in welfare-to-work activities less than the required hours of participation under Section 407 of the federal Social Security Act (42 U.S.C. Sec. 607) and any subsequent amendments thereto, for the entire time period on aid. A county retains the option to require all recipients or individual recipients to participate in welfare-to-work activities in excess of the minimum number of hours specified in this subdivision, up to 32 hours each week.

(b) Unless otherwise exempt, an adult recipient who is an unemployed parent, as defined in Section 11201, shall participate in at least 35 hours of welfare-to-work activities each week that will meet the required hours of participation under Section 407 of the federal Social Security Act (42 U.S.C. Sec. 607) and any subsequent amendments thereto. However, both parents in a two-parent assistance unit may contribute to the 35 hours, if provided in federal law as meeting the federal work participation requirements and if at least one parent meets the federal one-parent work requirement applicable on January 1, 1998. To be eligible for federally funded child care under Article 15.5 (commencing with Section 8350) of Chapter 2 of Part 6 of the Education Code, both parents shall participate in work activities that will meet the required hours of participation under Section 407 of the federal Social Security Act (42 U.S.C. Sec. 607) and any subsequent amendments thereto.

SEC. 27. Section 11323.2 of the Welfare and Institutions Code is amended to read:

11323.2. (a) Necessary supportive services shall be available to every participant in order to participate in the program activity to which he or she is assigned or to accept employment or the participant shall have good cause for not participating under subdivision (f) of Section 11320.3. As provided in the welfare-to-work plan entered into between the county and participant pursuant to this article, supportive services shall include all of the following:

(1) Child care.

(A) Paid child care shall be available to every participant with a dependent child in the assistance unit who needs paid child care if the child is 10 years of age or under, or requires child care or supervision due to a physical, mental, or developmental disability or other similar condition as verified by the county welfare department, or who is under court supervision.

(B) To the extent funds are available paid child care shall be available to a participant with a dependent child in the assistance unit who needs paid child care if the child is 11 or 12 years of age.

(C) Necessary child care services shall be available to every former recipient for up to two years, pursuant to Article 15.5 (commencing with Section 8350) of Chapter 2 of Part 6 of the Education Code.

(D) A child in foster care receiving benefits under Title IV-E of the federal Social Security Act (42 U.S.C.A. Sec. 670 et seq.) or a child who would become a dependent child except for the receipt of federal Supplemental Security Income benefits pursuant to Title XVI of the federal Social Security Act (42 U.S.C.A. Sec. 1381 et seq.) shall be deemed to be a dependent child for the purposes of this paragraph.

(E) The provision of care and payment rates under this paragraph shall be governed by Article 15.5 (commencing with Section 8350) of Chapter 2 of Part 6 of the Education Code. Parent fees shall be governed by subdivision (f) of Section 8263 of the Education Code.

(2) Transportation costs, which shall be governed by regional market rates as determined in accordance with regulations established by the department.

(3) Ancillary expenses, which shall include the cost of books, tools, clothing specifically required for the job, fees, and other necessary costs.

(4) Personal counseling. A participant who has personal or family problems that would affect the outcome of the welfare-to-work plan entered into pursuant to this article shall, to the extent available, receive necessary counseling or therapy to help him or her and his or her family adjust to his or her job or training assignment.

(b) If provided in a county plan, the county may continue to provide case management and supportive services under this section to former participants who become employed. The county may provide these services for up to the first 12 months of employment to the extent they are not available from other sources and are needed for the individual to retain the employment.

SEC. 28. Section 11323.4 of the Welfare and Institutions Code is amended to read:

11323.4. (a) Payments for supportive services, as described in Section 11323.2, shall be advanced to the participant, wherever necessary, and when desired by the participant, so that the participant need not use his or her funds to pay for these services. Payments for child care services shall be made in accordance with Article 15.5 (commencing with Section 8350) of Chapter 2 of Part 6 of the Education Code.

(b) The county welfare department shall take all reasonable steps necessary to promptly correct any overpayment or underpayment of supportive services payments to a recipient or a service provider, including, but not limited to, all cases involving fraud and abuse, consistent with procedures developed by the department.

(c) Notwithstanding any other provision of this article, any participant in on-the-job training who becomes ineligible for aid under this chapter due to earned income or hours worked, shall remain a participant in the program under this article for the duration of the on-the-job training assignment and shall be eligible for supportive services for the duration of the on-the-job training,

provided this duration does not exceed the time limits otherwise applicable to the recipient.

(d) Notwithstanding any other provision of this article, any participant in on-the-job training, grant-based on-the-job training, supported work, or transitional employment who remains eligible for aid pursuant to this chapter, shall be eligible for transportation and ancillary expenses pursuant to paragraphs (2) and (3) of subdivision (a) of Section 11323.2.

(e) (1) Participants shall be encouraged to apply for financial aid, including educational grants, scholarships, and awards.

(2) To the extent permitted by federal law, the county shall coordinate with financial aid offices to establish procedures whereby the educational expenses of participants are met through available financial aid and the supportive services described in Section 11323.2. These procedures shall not result in duplication of payments, and shall require determinations to be made on an individual basis to ensure that using financial aid will not prevent the person's participation in his or her welfare-to-work plan.

(f) Notwithstanding Section 10850, for purposes of child care supportive services, county welfare departments shall share information necessary for the administration of the child care programs and the CalWORKs program.

SEC. 29. Section 11324.6 of the Welfare and Institutions Code is amended to read:

11324.6. Any employment or training program position described in subdivisions (a) to (j), inclusive, of Section 11322.6 or Section 11322.9 or under any county pilot project, shall not be created as a result of, or shall not result in, any of the following:

(a) Displacement or partial displacement of current employees, including, but not limited to, a reduction in hours of nonovertime and overtime work, wages, or employment benefits.

(b) The filling of positions which would otherwise be promotional opportunities for current employees, except when positions are to be filled through an open process in which recipients are provided equal opportunity to compete.

(c) The filling of a position, prior to compliance with applicable personnel procedures or provisions of collective bargaining agreements.

(d) The filling of established unfilled public agency positions, unless the positions are unfunded in a public agency budget.

(e) The filling of a position created by termination, layoff, or reduction in work force, caused by the employer's intent to fill the position with a subsidized position pursuant to this article.

(f) A strike, lockout, or other bona fide labor dispute, or violation of any existing collective bargaining agreement between employees and employers.

(g) The filling of a work assignment customarily performed by a worker in a job classification within a recognized collective

bargaining unit in that specific worksite, or the filling of a work assignment in any bargaining unit in which funded positions are vacant or in which regular employees are on layoff.

(h) The termination of a contract for services, prior to its expiration date, that results in the displacement or partial displacement of workers performing contracted services, caused by the employer's intent to fill the position with a subsidized position pursuant to this article.

(i) The denial to a participant or employee of protections afforded other workers on the worksite by state and federal laws governing workplace health, safety, and representation.

(j) Subdivisions (b), (d), and (g) shall not apply to unsubsidized employment placements.

SEC. 30. Section 11324.7 of the Welfare and Institutions Code is amended to read:

11324.7. (a) The department shall provide a grievance process for regular employees and their representatives who wish to file a complaint that an assignment to community service, work experience, on-the-job training, or any activity funded by grant-based on-the-job training violates any of the displacement provisions contained in Section 11324.6, as applicable, respecting any employment or training position created pursuant to this article.

(b) (1) The grievance process established pursuant to subdivision (a) shall consist of an informal procedure followed by a hearing if the informal procedure fails to resolve the complaint to the satisfaction of the complainant.

(2) The grievance and any available appeal process shall be conducted in accordance with rules and notification requirements adopted and promulgated in federal law.

(3) The department shall issue instructions and requirements for the grievance process.

(c) The department shall administer the employee grievance process either directly or through the county welfare departments, or may enter into agreements with another state agency to administer all or any part of the grievance process.

(d) Notwithstanding subdivisions (b) and (c), the department shall require the use of any existing grievance procedure that is part of a collective bargaining agreement between the employer and the labor union representing the regular employee, in lieu of the process established by this section.

(e) Remedies for complaining regular employees in the process established by this section shall include, where appropriate, reinstatement, retroactive pay, and retroactive benefits.

SEC. 31. Section 11324.8 of the Welfare and Institutions Code is amended to read:

11324.8. (a) At the time an individual applies for aid under this chapter, or at the time a recipient's eligibility for aid is determined, the county shall do all of the following:

(1) Provide the individual, in writing and orally as necessary, with at least the following program information:

(A) A general description of the education, employment, and training opportunities and the supportive services available, including transitional benefits.

(B) A description of the exemptions from required participation provided under this article and the consequences of a refusal to participate in program components, if not exempt.

(C) A description of the responsibility of the participant to cooperate in establishing paternity and enforcing child support obligations, and to assist individuals in establishing paternity and obtaining child support as a condition of eligibility.

(2) Determine whether the individual is required to participate in the program provided under this article.

(b) At the time an individual is required to participate pursuant to this article, he or she shall receive a written preliminary determination that he or she is a member of a targeted group, for purposes of any applicable and operative federal Targeted Jobs Tax Credit and California Jobs Tax Credit.

(c) Persons not required to participate may volunteer to participate.

(d) An applicant for, or a recipient of, aid who is dissatisfied with the provisions of the welfare-to-work plan may seek redress through the independent assessment process, as described in subdivision (c) of Section 11325.4 or the state hearing or county grievance process, as described in Section 11327.8.

SEC. 32. Section 11325.1 of the Welfare and Institutions Code is amended to read:

11325.1. When child care services are provided by a program funded under Section 8481 of the Education Code to a recipient under this article or any other job training program for recipients under this chapter, and the job training program utilizes vouchers for child care services issued by the county or a contracting agency, reimbursement for those child care services shall be made at a market rate established by the State Department of Education pursuant to Article 15.5 (commencing with Section 8350) of Chapter 2 of Part 6 of the Education Code.

SEC. 33. Section 11325.21 of the Welfare and Institutions Code is amended to read:

11325.21. (a) Any individual who is required to participate in welfare-to-work activities pursuant to this article shall enter into a written welfare-to-work plan with the county welfare department after assessment as required by subdivision (b) of Section 11320.1, except as provided for in Section 11320.3. The plan shall include the activities and services that will move the individual into employment.

(b) The county shall allow the participant three working days after completion of the plan or subsequent amendments to the plan in which to evaluate and request changes to the terms of the plan.

(c) The plan shall be written in clear and understandable language, and have a simple and easy-to-read format.

(d) The plan shall contain at least all of the following general information:

(1) A general description of the program provided for in this article, including available program components and supportive services.

(2) A general description of the rights, duties, and responsibilities of program participants, including a list of the exemptions from the required participation under this article, the consequences of a refusal to participate in program components, and criteria for successful completion of the program.

(3) A description of the grace period required in paragraph (5) of subdivision (b) of Section 11325.22.

(e) The plan shall specify, and shall be amended to reflect changes in, the participant's welfare-to-work activity, a description of services to be provided in accordance with Sections 11322.6, and 11322.8 as needed, and specific requirements for successful completion of assigned activities including required hours of participation.

The plan shall also include a general description of supportive services pursuant to Section 11323.2 that are to be provided as necessary for the participant to complete assigned program activities.

(f) Any assignment to a program component shall be reflected in the plan or an amendment to the plan. The participant shall maintain satisfactory progress toward employment through the methods set forth in the plan, and the county shall provide the services pursuant to Section 11323.2.

(g) This section shall not apply to individuals subject to Article 3.5 (commencing with Section 11331) during the time that article is operative.

SEC. 34. Section 11325.22 of the Welfare and Institutions Code is amended to read:

11325.22. (a) (1) Following the appraisal required by Section 11325.2, all participants except those described in paragraph (4) of this subdivision, shall be assigned to participate for a period of up to four consecutive weeks in job search activities. These activities may include the use of job clubs to identify the participant's qualifications. The county shall consider the skills and interests of the participants in developing a job search strategy. The period of job search activities may be shortened if the participant and the county agree that further activities would not be beneficial. Job search activities may be shortened for a recipient if the county determines that the recipient will not benefit because he or she may suffer from an emotional or

mental disability that will limit or preclude the recipient's participation under this article.

(2) Nothing in this section shall require participation in job search activities, the schedule for which interferes with unsubsidized employment or participation pursuant to Section 11325.23.

(3) Job search activities may be required in excess of the limits specified in paragraph (1) on the basis of a review by the county of the recipient's performance during job search to determine whether extending the job search period would result in unsubsidized employment.

(4) A person subject to Article 3.5 (commencing with Section 11331) or subdivision (d) of Section 11320.3 shall not be required, but may be permitted, to participate in job search activities as his or her first program assignment following appraisal upon earning a high school diploma or its equivalent, if she or he has not already taken the option to complete these activities as the first program assignment following appraisal.

(b) (1) Upon the completion of job search activities, or a determination that those activities are not required in accordance with paragraph (3) of subdivision (a), the participant shall be assigned to one or more of the activities described in Section 11322.6 as needed to attain employment.

(2) (A) The assignment to one or more of the program activities as required in paragraph (1) of this subdivision shall be based on the welfare-to-work plan developed pursuant to an assessment as described in Section 11325.4. The plan shall be based, at a minimum, on consideration of the individual's existing education level, employment experience and relevant employment skills, available program resources, and local labor market opportunities.

(B) An assessment pursuant to Section 11325.4 shall be performed upon completion of job search activities or at such time as it is determined that job search will not be beneficial.

(C) Notwithstanding subparagraphs (A) and (B), an assessment shall not be required to develop a welfare-to-work plan for a person who is participating in an approved self-initiated program pursuant to Section 11325.23 unless the county determines that an assessment is necessary to meet the hours specified in Section 11325.23.

(3) A participant who lacks basic literacy or mathematics skills, a high school diploma or general educational development certificate, or English language skills, shall be assigned to participate in adult basic education as described in subdivision (k) of Section 11322.6, as appropriate and necessary for removal of the individual's barriers to employment.

(4) Participation in activities assigned pursuant to this section may be sequential or concurrent. The county may require concurrent participation in the assigned activities if it is appropriate to the participant's abilities, consistent with the participant's

welfare-to-work plan, and the activities can be concurrently scheduled.

(5) The participant has 30 days from the beginning of the initial training or education assignment in which to request a change or reassignment to another component. The county shall grant the participant's request for reassignment if another assignment is available that is consistent with the participant's welfare-to-work plan and the county determines the other assignment will readily lead to employment. This grace period shall be available only once to each participant.

(c) Any assignment or change in assignment to a program activity pursuant to this section shall be included in the welfare-to-work plan, or an amendment to the plan, as required in Section 11325.21.

(d) A participant who has not obtained unsubsidized employment upon completion of the activities in a welfare-to-work plan developed pursuant to the job search activities required by subdivision (a) and an assessment required by subdivision (b) shall be referred to reappraisal as described in Section 11326, unless he or she is required to be assigned to community service pursuant to Section 11322.9.

(e) The criteria for successful completion of an assigned education or training activity shall include regular attendance, satisfactory progress, and completion of the assignment. A person who fails or refuses to comply with program requirements for participation in the activities assigned pursuant to this section shall be subject to Sections 11327.4 and 11327.5.

(f) Except as provided in paragraph (4) of subdivision (a), this section shall not apply to individuals subject to Article 3.5 (commencing with Section 11331) during the time that article is operative.

SEC. 35. Section 11325.23 of the Welfare and Institutions Code is amended to read:

11325.23. (a) (1) Except as provided in paragraph (2), any student who, at the time he or she is required to participate under this article pursuant to Section 11320.3, is enrolled in any undergraduate degree or certificate program that leads to employment may continue in that program within the time period specified in subdivisions (a) and (d) of Section 11454 if he or she is making satisfactory progress in that program, the county determines that continuing in the program is likely to lead to self-supporting employment for that recipient, and the welfare-to-work plan reflects that determination.

(2) Any individual who possesses a baccalaureate degree shall not be eligible to participate under this section unless the individual is pursuing a California regular classroom teaching credential in a college or university with an approved teacher credential preparation program.

(3) (A) Subject to the limitation provided in subdivision (f), a program shall be determined to lead to employment if it is on a list of programs that the county welfare department and local education agencies or providers agree lead to employment. The list shall be agreed to annually, with the first list completed no later than January 31, 1998. By January 1, 2000, all educational providers shall report data regarding programs on the list for the purposes of the report card established under Section 15037.1 of the Unemployment Insurance Code for the programs to remain on the list.

(B) For students not in a program on the list prepared under subparagraph (A), the county shall determine if the program leads to employment. The recipient shall be allowed to continue in the program within the time period specified in subdivisions (a) and (d) of Section 11454 if the recipient demonstrates to the county that the program will lead to self-supporting employment for that recipient and the documentation is included in the welfare-to-work plan.

(C) If participation in educational or vocational training, as determined by the number of hours required for classroom, laboratory, or internship activities, is not at least 32 hours, the county shall require concurrent participation in work activities pursuant to subdivisions (a) to (j), inclusive, of Section 11322.6 and Section 11325.22.

(b) Participation in the self-initiated education or vocational training program shall be reflected in the welfare-to-work plan required by Section 11325.21. The welfare-to-work plan shall provide that whenever an individual ceases to participate in, refuses to attend regularly, or does not maintain satisfactory progress in the self-initiated program, the individual shall participate under this article in accordance with Section 11325.22.

(c) Any person whose previously approved self-initiated education or training program is interrupted for reasons that meet the good cause criteria specified in subdivision (f) of Section 11320.3 may resume participation in the same program if the participant maintained good standing in the program while participating and the self-initiated program continues to meet the approval criteria. The county shall adjust the completion date of the program, accounting for the time of absence to allow the participant a cumulative timeframe outlined in subdivision (a).

(d) Supportive services reimbursement shall be provided for any participant in a self-initiated training or education program approved under this subdivision. This reimbursement shall be provided if no other source of funding for those costs is available. Any offset to supportive services payments shall be made in accordance with subdivision (e) of Section 11323.4.

(e) Any student who, at the time he or she is required to participate under this article pursuant to Section 11320.3, has been enrolled and is making satisfactory progress in a degree or certificate program, but does not meet the criteria set forth in subdivision (a),

shall have until the beginning of the next educational semester or quarter break to continue his or her educational program if he or she continues to make satisfactory progress. At the time the educational break occurs, the individual is required to participate pursuant to Section 11320.1. The time spent in the educational program shall count towards the time limits and community service requirements established for recipients in Sections 11320.1 and 11454. A recipient not expected to complete the program by the next break may continue his or her education under the timelines in subdivision (a), provided he or she transfers at the end of the current quarter or semester to a program that qualifies under that subdivision, the county determines that participation is likely to lead to self-supporting employment of the recipient, and the welfare-to-work plan reflects that determination.

(f) Any degree, certificate, or vocational program offered by a private postsecondary training provider shall not be approved under this section unless the program is either approved or exempted by the appropriate state regulatory agency and the program is in compliance with all other provisions of law.

SEC. 36. Section 11325.8 of the Welfare and Institutions Code is amended to read:

11325.8. (a) The county plan required by Section 10531 shall include a plan for the provision of substance abuse treatment services. The plan shall describe how the county welfare department and the county alcohol and drug program will collaborate to ensure an effective system is available to provide alcohol and drug services to recipients whose substance abuse creates a barrier to employment. The plan shall be developed in a manner that is consistent with the county's welfare-to-work program. Substance abuse treatment services shall include evaluation, substance abuse treatment, employment counseling, provision of community service jobs, or other appropriate services.

(b) It is the intent of the Legislature that substance abuse treatment services for participants shall be provided by the county alcohol and drug program, or by a nonprofit agency under contract with the county alcohol and drug program. If the county welfare department determines that the county alcohol and drug program is unable to provide the needed services, the county department may contract directly with a nonprofit state-licensed narcotic treatment program, residential facility, or certified nonresidential substance abuse program to obtain substance abuse services for a participant.

(c) (1) A participant who is in a job search component of the county's welfare-to-work program may be directed at any time to an assessment by the job search manager if the county believes that the participant's substance abuse may limit or preclude his or her satisfactory completion of the job search component.

(2) During the assessment, if the case manager believes that substance abuse will impair the ability of the participant to obtain and

retain employment, the case manager shall refer the participant to the county alcohol and drug program for an evaluation and determination of any treatment necessary for the participant's transition from welfare to work. If the county alcohol and drug program is unable to provide the necessary services, the county may refer the participant to a state-licensed or certified nonprofit agency under contract with the county to perform these services.

(3) If a participant is determined to have a substance abuse problem, based on an evaluation by the county alcohol and drug program or a nonprofit state-licensed narcotic treatment program, residential facility, or certified nonresidential substance abuse program, the case manager shall develop the participant's welfare-to-work plan based on the results of that evaluation. In such a case, the participant's welfare-to-work plan may include appropriate treatment requirements, including assignment to a substance abuse program.

(4) A recipient of aid under this chapter shall be offered two opportunities to receive substance abuse treatment under subdivision (q) of Section 11322.6, except that the county may offer the recipient additional treatment opportunities.

(5) When a participant's welfare-to-work plan includes assignment to a treatment program, a case manager may determine that the participant is out of compliance with that plan if, at any time, in consultation with the substance abuse treatment provider, the county determines that the participant has failed or refused to participate in a treatment program without good cause. The assigned treatment program shall be reasonably accessible within the county of residence or a nearby county.

(6) When a case manager determines that a participant in a treatment program as specified in his or her welfare-to-work plan is out of compliance with a program requirement other than participation in a required treatment program, the determination of whether the participant has good cause to be out of compliance shall include consideration of whether the participant's substance abuse problem caused or substantially contributed to the failure to comply with the program requirements. In this determination, the county shall consult the substance abuse treatment provider as appropriate.

(d) No recipient may participate in a substance abuse treatment program for longer than six months without concurrently participating in a work activity, to be determined by the county and the recipient, in consultation with the treatment provider. However, if the recipient is in a state-licensed residential facility or a certified nonresidential substance abuse program that requires him or her to stay at the program site for a minimum of three hours per day, three days per week, or otherwise not to participate in nonprogram activities, the requirements of the treatment program shall fulfill the recipient's work activity requirement.

(e) Any funds appropriated by the Legislature for allocation to each county to eliminate barriers to employment due to participants' substance abuse problems shall be allocated consistent with the formula used to distribute each county's CalWORKs program allocation and shall be used to supplement, and not supplant, substance abuse treatment funds otherwise available to recipients. It is the intent of the Legislature that these funds be used to develop, expand, or develop and expand programs appropriate for CalWORKs program recipients. It is further the intent of the Legislature that, to the extent possible, these funds be used to maximize federal financial participation through Title XIX of the federal Social Security Act (Title 42 U.S.C. Sec. 1396 et seq.).

(f) Each county shall report annually to the state the number of CalWORKs program recipients who receive substance abuse treatment and the extent to which the allocation is sufficient to meet the need for substance abuse services as determined by the county.

SEC. 37. Section 11326 of the Welfare and Institutions Code is amended to read:

11326. (a) The county shall conduct a reappraisal of any participant who does not obtain unsubsidized employment upon completion of all activities included in the welfare-to-work plan developed pursuant to Section 11325.4. The reappraisal shall evaluate whether there are extenuating circumstances as defined by the county that prevent the participant from obtaining employment within the local labor market area.

(b) Upon a determination that extenuating circumstances exist, the participant shall be assigned to additional activities in accordance with subdivision (b) of Section 11325.22 as the county determines to be appropriate and necessary.

(c) Upon a determination that no extenuating circumstances exist, and until this determination is reversed or community service activity pursuant to Section 11322.9 is required, the participant shall be limited to the activities in subdivisions (a), (d), (i), (*l*), and (q) of Section 11322.6. Participation in those activities shall be subject to the requirements of Section 11322.8.

SEC. 38. Section 11327.8 of the Welfare and Institutions Code is amended to read:

11327.8. (a) Except as specified in this section, whenever a participant believes that any program requirement or assignment in this program is in violation of his or her welfare-to-work plan or is inconsistent with this article, the participant may request a state hearing pursuant to Chapter 7 (commencing with Section 10950) of Part 2 or utilize a formal grievance procedure to be established by the county board of supervisors and specified in each county plan.

(b) If the participant is not satisfied with the outcome of the grievance procedure, he or she may appeal the decision in accordance with the procedures set forth in Chapter 7 (commencing with Section 10950) of Part 2. Participants shall be subject to sanctions

pending the outcome of the formal grievance procedure or any subsequent appeal, only if they fail to participate during the period the grievance procedure is being processed. However, a participant shall not utilize the grievance procedure to appeal the results of an assessment made pursuant to Section 11325.4.

(c) If a participant is not satisfied with the decision of a hearing conducted pursuant to Section 10950 concerning on-the-job working conditions or workers' compensation coverage, the participant may file a further appeal with the appropriate state regulating agency.

SEC. 39. Section 11328.8 of the Welfare and Institutions Code is amended to read:

11328.8. (a) The department, under the direction of the Health and Welfare Agency, the Chancellor's office of the California Community Colleges, and the State Department of Education shall each develop and implement regulations whereby any payment for education and training services from funds appropriated for the purposes of this article and delivered pursuant to Section 11322.6 by an entity contracting with a county shall be made in accordance with a competitively selected fixed unit price performance-based contract. Under these contracts, full payment shall not be considered earned until either of the following has occurred:

(1) The participant has successfully completed the education program.

(2) The participant has successfully completed the job training program and has been retained in unsubsidized employment for at least 180 days.

(b) Up to 70 percent of the fixed unit price for job training may be paid upon placement. At least 30 percent of the fixed unit price for job training shall be withheld for the followup during the 180-day retention period. Progress payments shall be made from this portion upon evidence of job retention at 30, 90, and 180 days. A pro rata share of the 70 percent payment shall be paid to the training provider if the participant fails to complete the training.

(c) The department may exempt county contracts for CalWORKs educational services from subdivisions (a) and (b) in instances where counties are unable to obtain educational services due to the absence of an available adult education program or the small number of CalWORKs referrals. The department, in conjunction with the State Department of Education, shall develop criteria for granting the exemptions from subdivisions (a) and (b). The departments shall also consider using funds set aside for CalWORKs educational services in the State Department of Education's annual budget allocation or funds allocated to the State Department of Education for CalWORKs costs in the annual Budget Act, to pay for the costs of education contracts permitted by this subdivision.

SEC. 40. Section 11331 of the Welfare and Institutions Code is amended to read:

11331. (a) The Legislature finds and declares that the connection between teenage parenting and long-term welfare dependency has been well documented by recent social science research. An estimated 60 percent of teenage parents who are currently receiving welfare will have 10 or more years of dependency on aid. Average time on aid for teenage parents is significantly longer than for parents who begin families at an older age.

(b) The Legislature finds that teenage parents who receive assistance under the CalWORKs program have unique education, vocational, training, health, and other social service needs that are not specifically provided for as part of the welfare-to-work activities. Research shows that successful programs that help teenage parents achieve self-sufficiency contain the following features:

(1) A comprehensive range of health and social services.

(2) Adequate supportive services.

(3) A sympathetic and supportive program atmosphere.

(4) Individual attention, especially regarding education pace and plan.

(5) An open format and an extended period of program availability.

(6) Caring, nonjudgmental staff.

(7) Strong case management systems, including followup activities to determine whether a student is progressing in his or her studies.

(c) The Legislature declares that this article is intended to ensure that the GAIN program does all of the following:

(1) Provide the education and training services needed by teenage parents to help them earn a high school diploma or its equivalent, including vocational training and preparation that may be available through local education agencies.

(2) Link teenagers to other needed health and social services available in the community.

SEC. 41. Section 11331.5 of the Welfare and Institutions Code is amended to read:

11331.5. (a) Recipients of aid under this chapter who are under 19 years of age, who are pregnant or custodial parents, shall be required to participate in the program, subject to both of the following requirements:

(1) The teenage parent shall participate in the program until earning his or her high school diploma or its equivalent.

(2) The teenage parent shall participate in the program as a student attending school on a full-time basis, as normally defined by the school in which the participant enrolls.

(b) A teen, as defined in paragraph (2) of subdivision (e) may continue to participate in the program provided for under this article. Any teen participating under this article pursuant to this subdivision shall be eligible for the same benefits as is any individual required to participate in the program.

(c) Notwithstanding subdivision (a), the county shall exempt a teenage parent from the program as verified by the county when any of the following conditions occur:

(1) The teenage parent is expelled from school and obtains verification that no other school in the district will permit him or her to attend, and the case manager cannot arrange for enrollment in an alternative school.

(2) The teenage parent cannot receive payment for child care or transportation expenses due to lack of program funding.

(3) Child care is necessary and unavailable.

(4) Public or private transportation is necessary and unavailable.

(5) A foster care payment is made under this chapter on behalf of the teenage parent.

(6) The teen parent has an illness, injury, or incapacity, as determined by a doctor's verification, that substantially deprives the teen parent of the ability to meet program requirements or to be successful in earning a high school diploma or its equivalent, and an alternative education program cannot be arranged.

(d) For the purposes of this article, "teen" or "teenage parent" means either of the following:

(1) A custodial parent or pregnant woman under 19 years of age, who is required to participate pursuant to subdivision (a).

(2) A custodial parent or pregnant woman 19 years of age who, prior to becoming 19 years of age, was participating in the program pursuant to subdivision (a), and who is otherwise eligible for voluntary continued participation in the program.

SEC. 42. Section 11331.7 of the Welfare and Institutions Code is amended to read:

11331.7. Counties shall arrange for the provision of education and supportive services that teenage parents need to successfully participate in the Cal-Learn Program. The county shall identify the need of each individual for, and the method of providing, the following services:

(a) Supportive services, including child care and transportation, as specified in Section 11323.2. Supportive services shall be limited to those that are necessary to enable the teenage parent to attend school regularly.

(b) Intensive case management services, as described in Section 11332.5.

(c) Any other services necessary for the teen parent to successfully participate in the Cal-Learn Program, that may include, but not be limited to, mental health services and substance abuse treatment.

SEC. 43. Section 11333.5 of the Welfare and Institutions Code is amended to read:

11333.5. (a) Counties shall develop linkages with local service providers that serve teenage parents.

(b) The county plan shall specifically describe those required services that are available to teenage parents, as follows:

(1) An identification of available services to teenagers.

(2) The extent to which these programs are currently serving AFDC recipients.

(3) The resources that these programs may make available to GAIN participants.

(4) The linkages established with these programs.

(c) The department shall review each county's plan to determine both of the following:

(1) Whether the intensity of case management services provided by the county meets the requirements of subdivision (b) of Section 11331.7.

(2) Whether the availability of services to teenagers is adequate.

SEC. 44. Section 11333.7 of the Welfare and Institutions Code is amended to read:

11333.7. (a) Any participant required to participate pursuant to Section 11331.5 who maintains satisfactory progress in school shall, not more than four times in a calendar year, receive a one hundred dollar ($100) supplement to the amount of aid paid pursuant to Section 11450. The supplement shall be paid to the assistance unit of which the teenage parent is a member in the month following submission of the report card, if received by the county no later than the eleventh calendar day of the month, or in the second month following submission of the report card, if received by the county after the eleventh calendar day of the month.

(b) (1) Any participant required to participate pursuant to Section 11331.5 who fails to demonstrate that he or she has made adequate progress in school, either by failing to provide the report card or based on the grades on the report card, shall, not more than four times in a calendar year, be subject to a sanction that shall be a reduction of one hundred dollars ($100) of the amount that would otherwise be paid under Section 11450 apportioned equally over a two-month period.

(2) (A) Participants, including, but not limited to, those subject to sanctions, may seek to demonstrate good cause for lack of adequate progress. If there is good cause for lack of adequate progress the county shall either defer the participant from program participation, or waive all or part of the sanction, or both. Participants shall not otherwise be subject to conciliation under Section 11327.4 and sanctions under Section 11327.5, and shall be referred to case management services to determine the causes of poor school performance and how it can be improved.

(B) For the purposes of this section, failing to make adequate progress in school shall constitute good cause only when there is a condition or other circumstances that substantially deprive the participant of the ability to make adequate progress on the report card or periodic progress report.

(c) Any participant required to participate pursuant to Section 11333.5 who successfully completes high school or a California high school equivalency examination shall receive a five hundred dollar ($500) supplement. No assistance unit shall receive a one hundred dollar ($100) supplement when a five hundred dollar ($500) supplement for the same report card or progress report is paid. The five hundred dollar ($500) supplement shall be paid to the teenage parent in the month following submission of the record of completion, if received by the county no later than the 11th calendar day of the month, or in the second month following submission of the record of completion, if received by the county after the 11th calendar day of the month.

(d) The sanction specified in subdivision (b) shall be applied only once per report card, not to exceed fifty dollars ($50) in any single month, and shall be applied to the amount of aid paid to the assistance unit of which the teenage parent is a member pursuant to Section 11450. The participant shall submit a copy of the report card to the case manager within 10 working days of receipt of the report card.

(e) (1) For purposes of this section, in schools that provide periodic report cards with letter grades, satisfactory progress means maintaining a grade point average of at least 2.0 on a scale where A equals 4.0 points and F equals 0 points, and adequate progress means maintaining a grade point average of at least 1.0 on the same scale.

(2) For the purposes of this section, in schools or other educational programs that do not provide letter grades indicating student performance, satisfactory progress or inadequate progress shall be determined by the school's regular assessment of periodic progress.

(f) In cases where a participant is subject to a sanction pursuant to subdivision (b), case managers shall do all of the following:

(1) Fully inform teenage parents of the consequences of continuing to fail to comply with the program.

(2) Make reasonable efforts to reach teenage parents who they believe are in danger of continuing to fail to make satisfactory or adequate progress or not to attend school.

(3) Make reasonable efforts to secure a face-to-face meeting with a teenage parent before initiating a sanction.

(g) If a teenage parent fails or refuses to comply with program requirements without good cause, the case manager shall again inform the client of the consequences of not participating in the program, and shall provide the teenage parent with the telephone number and address of the local welfare rights organization or legal aid society, should he or she need further assistance.

SEC. 45. Section 11334 of the Welfare and Institutions Code is repealed.

SEC. 46. Section 11334.2 of the Welfare and Institutions Code is amended to read:

11334.2. Sanctions and bonuses pursuant to Section 11333.7 shall be applied in the first quarter following participant notification of program requirements.

SEC. 47. Section 11334.7 of the Welfare and Institutions Code is amended to read:

11334.7. The director may provide funds to support this article in an item separate from other welfare-to-work activities, and these funds shall not be subject to Section 11322.4.

SEC. 48. Section 11450.16 is added to the Welfare and Institutions Code, to read:

11450.16. (a) For purposes of determining eligibility under this chapter, and for computing the amount of aid payment under Section 11450, families shall be grouped into assistance units.

(b) Every assistance unit shall include at least one of the following persons:

(1) One of each of the following:

(A) An eligible child.

(B) The caretaker relative of an otherwise eligible child who is not receiving aid under Section 11250 because that child is receiving benefits under Title XVI of the Social Security Act (Subchapter 16 (commencing with Section 1381), of Chapter 7 of Title 42 of the United States Code) or foster care payments under Section 11461.

(2) A pregnant woman who is eligible for payments under subdivision (c) of Section 11450.

(c) Every assistance unit shall, in addition to the requirements of subdivision (b), include the eligible parents of the eligible child and the eligible siblings, including half-siblings, of the eligible child when those persons reside in the same home as the eligible child. This subdivision shall not apply to any convicted offender who is permitted to reside at the home of the eligible child as part of a court-imposed sentence and who is considered an absent parent under Section 11250.

(d) An assistance unit may, at the option of the family comprising the assistance unit, also include the nonparent caretaker relative of the eligible child, the spouse of the parent of the eligible child, otherwise eligible nonsibling children in the care of the caretaker relative of the eligible child, and the alternatively sentenced offender parent exempted under subdivision (c).

(e) If two or more assistance units reside in the same home, they shall be combined into one assistance unit when any of the following circumstances occur:

(1) There is a common caretaker relative for the eligible children.

(2) One caretaker relative marries another caretaker relative.

(3) Two caretaker relatives are the parents of an eligible child.

(f) For purposes of this section, "caretaker relative" means the parent or other relative, as defined by regulations adopted by the department, who exercises responsibility and control of a child.

SEC. 49. Section 11454 of the Welfare and Institutions Code is amended to read:

11454. (a) (1) Except as otherwise provided in this chapter and in paragraph (2), a parent or caretaker relative shall not be eligible to receive aid for a cumulative period of more than 18 months after the individual signs, or refuses, without good cause, to sign a welfare-to-work plan, unless it is certified by the county that there is no job currently available for the recipient and the recipient participates in community service activities, pursuant to Section 11322.9.

(2) A parent or caretaker relative recipient who is subject to the requirements of paragraph (2) of subdivision (c) of Section 10532 shall not be eligible to receive aid under this chapter for a cumulative period of more than 24 months, unless it is certified by the county that there is no job currently available for the recipient and the recipient participates in community service activities pursuant to Section 11322.9.

(3) For purposes of this subdivision, a job shall not be considered to be currently available if a recipient has taken and continues to take all steps to apply for appropriate positions and has not refused an offer of employment without good cause.

(4) A parent or caretaker relative recipient to whom paragraph (1) or (2) applies, who is in a job for less than the number of hours required by Section 11322.8, and for whom no job is currently available for the required number of hours, shall remain eligible for aid under this chapter and shall participate in community service activities for the additional number of hours necessary to meet the requirements of Section 11322.8.

(b) A parent or caretaker relative shall not be eligible for aid under this chapter when he or she has received aid under this chapter or from any state under the Temporary Assistance for Needy Families program (Part A (commencing with Section 401) of Title IV of the federal Social Security Act (42 U.S.C. Sec. 601 et seq.) for a cumulative total of 60 months.

(c) No month in which aid has been received prior to January 1, 1998, shall be taken into consideration in computing the 18-month, 24-month, or 60-month limitation provided for in subdivision (a) or (b).

(d) Each county shall adopt criteria for extending the 18-month limitation prescribed by subdivision (a) for up to six months if the extension is likely to result in unsubsidized employment or if local unemployment rates or other conditions in the local economy are such that employment is not available.

(e) Subdivision (b) shall not be applicable when all parent or caretaker relatives of the aided child who are living in the home of the child meet any of the following requirements:

(1) They are 60 years of age or older.

(2) They meet one of the conditions specified in paragraph (4) or (5) of subdivision (b) of Section 11320.3.

(3) They are not included in the assistance unit.

(4) They are receiving benefits under Section 12200 or Section 12300, State Disability Insurance benefits or Workers' Compensation Temporary Disability Insurance, if the disability significantly impairs the recipient's ability to be regularly employed or participate in welfare-to-work activities.

(5) They are incapable of maintaining employment or participating in welfare-to-work activities, as determined by the county, based on the assessment of the individual and the individual has a history of participation and full cooperation in welfare-to-work activities.

SEC. 50. Section 11454.5 of the Welfare and Institutions Code is amended to read:

11454.5. (a) Any month in which a recipient is not required to participate in welfare-to-work activities pursuant to subdivision (b) of Section 11320.3 because of a condition that is expected to last at least 30 days or is eligible for, participating in, or exempt from, the Cal-Learn program provided for pursuant to Article 3.5 (commencing with Section 11331) or is participating in another teen parent program approved by the department shall not be counted as a month of receipt of aid for the purpose of subdivision (a) of Section 11454.

(b) Any month in which the following conditions exist shall not be counted as a month of receipt of aid for the purposes of subdivision (b) of Section 11454:

(1) The recipient is exempt from participation under Article 3.2 (commencing with Section 11320) due to disability, or advanced age in accordance with paragraph (3) of subdivision (b) of Section 11320.3, or due to caretaking responsibilities that impair the recipient's ability to be regularly employed, in accordance with paragraph (4) or (5) of subdivision (b) of Section 11320.3.

(2) The recipient is eligible for, participating in, or exempt from, the Cal-Learn Program provided for pursuant to Article 3.5 (commencing with Section 11331) or is participating in another teen parent program approved by the department.

(3) The cost of the cash aid provided to the recipient for the month is fully reimbursed by child support, whether collected in that month or any subsequent month.

(4) The family is a former recipient of cash aid under this chapter and currently receives only child care, case management, or supportive services pursuant to Section 11323.2 or Article 15.5 (commencing with Section 8350) of Chapter 2 of Part 6 of the Education Code.

(5) To the extent provided by federal law, the recipient lived in Indian country, as defined by federal law, or an Alaskan native village

in which at least 50 percent of the adults living in the Indian country or in the village are not employed.

(c) In cases where a lump-sum diversion payment is provided in lieu of cash aid under Section 11266.5, the month in which the payment is made or the months calculated pursuant to subdivision (f) of Section 11266.5 shall count against the limits specified in Section 11454.

SEC. 51. Section 11454.6 of the Welfare and Institutions Code is amended to read:

11454.6. (a) Notwithstanding Section 15200, to the extent that the exemptions from the time limits on aid specified in paragraphs (1), (2), (4), and (5) of subdivision (e) of Section 11454 and subdivision (b) of Section 11454.5 exceed 20 percent of the number of families aided in a county, for a period as determined by the United States Department of Health and Human Services, for purposes of measuring the hardship exemption for time limits, the county shall be responsible for the amount of aid that would otherwise have been paid through federal Temporary Assistance for Needy Families block grant funds pursuant to Section 11450, with respect to those persons exempt under either paragraphs (1), (2), (4), and (5) of subdivision (e) of Section 11454 or subdivision (b) of Section 11454.5 that exceed the 20 percent hardship exemption during the period determined by the United States Department of Health and Human Services and provided for in federal law.

(b) Subdivision (a) shall not apply if the statewide percentage of families aided during that period is 20 percent or less.

(c) The department may determine that a county has good cause for exceeding the 20-percent limitation provided for in subdivision (a). Under this determination, the county share may be reduced or waived by the department.

(d) It is the intent of the Legislature that the steering committee as specified in Section 10544.317 review this provision to ensure that:

(1) The state does not exceed the limit on hardship exemptions as provided in federal law.

(2) Counties are not penalized for circumstances beyond their control and that statewide flexibility for allocation of the percentages is assured.

(3) Recipients will have access to the hardship exemption, regardless of their county of origin.

SEC. 52. Section 11477 of the Welfare and Institutions Code is amended to read:

11477. As a condition of eligibility for aid paid under this chapter, each applicant or recipient shall do all of the following:

(a) (1) Assign to the county any rights to support from any other person the applicant or recipient may have in his or her own behalf or in behalf of any other family member for whom the applicant or recipient is applying for or receiving aid, not exceeding the total amount of cash assistance provided to the family under this chapter.

Receipt of public assistance under this chapter shall operate as an assignment by operation of law. An assignment of support rights to the county shall also constitute an assignment to the state. If support rights are assigned pursuant to this subdivision, the assignee may become an assignee of record by the district attorney or other public official filing with the court clerk an affidavit showing that an assignment has been made or that there has been an assignment by operation of law. This procedure does not limit any other means by which the assignee may become an assignee of record.

(2) Support that has been assigned pursuant to paragraph (1) and that accrues while the family is receiving aid under this chapter shall be permanently assigned until the entire amount of aid paid has been reimbursed.

(3) If the federal government does not permit states to adopt the same order of distribution for preassistance and postassistance child support arrears that are assigned on or after October 1, 1998, support arrears that accrue before the family receives aid under this chapter that are assigned pursuant to this subdivision shall be assigned as follows:

(A) Child support assigned prior to January 1, 1998, shall be permanently assigned until aid is no longer received and the entire amount of aid has been reimbursed.

(B) Child support assigned on or after January 1, 1998, but prior to October 1, 2000, shall be temporarily assigned until aid under this chapter is no longer received and the entire amount of aid paid has been reimbursed or until October 1, 2000, whichever comes first.

(C) On or after October 1, 2000, support assigned pursuant to this subdivision that was not otherwise permanently assigned shall be temporarily assigned to the county until aid is no longer received.

(D) On or after October 1, 2000, support that was temporarily assigned pursuant to this subdivision shall, when a payment is received from the federal tax intercept program, be temporarily assigned until the entire amount of aid paid has been reimbursed.

(4) If the federal government permits states to adopt the same order of distribution for preassistance and postassistance child support arrears, child support arrears shall be assigned, as follows:

(A) Child support assigned pursuant to this subdivision prior to October 1, 1998, shall be assigned until aid under this chapter is no longer received and the entire amount has been reimbursed.

(B) On or after October 1, 1998, child support assigned pursuant to this subdivision that accrued before the family receives aid under this chapter and that was not otherwise permanently assigned, shall be temporarily assigned until aid under this chapter is no longer received.

(C) On or after October 1, 1998, support that was temporarily assigned pursuant to this subdivision shall, when a payment is received from the federal tax intercept program, be temporarily assigned until the entire amount of aid paid has been reimbursed.

(b) (1) Cooperate with the county welfare department and district attorney in establishing the paternity of a child of the applicant or recipient born out of wedlock with respect to whom aid is claimed, and in establishing, modifying, or enforcing a support order with respect to a child of the individual for whom aid is requested or obtained, unless the applicant or recipient qualifies for a good cause exception as provided in Section 11477.04. The granting of aid shall not be delayed or denied if the applicant is otherwise eligible, if the applicant completes the necessary forms and agrees to cooperate with the district attorney in securing support and determining paternity, where applicable. The district attorney shall have staff available, in person or by telephone, at all county welfare offices and shall conduct an interview with each applicant to obtain information necessary to establish paternity and establish, modify, or enforce a support order at the time of the initial interview with the welfare office. The district attorney shall make the determination of cooperation. If the applicant or recipient attests under penalty of perjury that he or she cannot provide the information required by this subdivision, the district attorney shall make a finding regarding whether the individual could reasonably be expected to provide the information, before the district attorney determines whether the individual is cooperating. In making the finding, the district attorney shall consider all of the following:

(A) The age of the child for whom support is sought.

(B) The circumstances surrounding the conception of the child.

(C) The age or mental capacity of the parent or caretaker of the child for whom aid is being sought.

(D) The time that has elapsed since the parent or caretaker last had contact with the alleged father or obligor.

(2) Cooperation includes the following:

(A) Providing the name of the alleged parent or obligor and other information about that person if known to the applicant or recipient, such as address, social security number, telephone number, place of employment or school, and the names and addresses of relatives or associates.

(B) Appearing at interviews, hearings, and legal proceedings provided the applicant or recipient is provided with reasonable advance notice of the interview, hearing, or legal proceeding and does not have good cause not to appear.

(C) If paternity is at issue, submitting to genetic tests, including genetic testing of the child, if necessary.

(D) Providing any additional information known to or reasonably obtainable by the applicant or recipient necessary to establish paternity or to establish, modify, or enforce a child support order.

(3) A recipient or applicant shall not be required to sign a voluntary declaration of paternity, as set forth in Chapter 3 (commencing with Section 7570) of Part 2 of Division 12 of the Family Code, as a condition of cooperation.

SEC. 52.5. Section 11495.15 of the Welfare and Institutions Code is amended to read:

11495.15. A county may waive a program requirement for a recipient who has been identified as a past or present victim of abuse when it has been determined that good cause exists pursuant to paragraph (2) of subdivision (f) of Section 11320.3. Until implementation of the regulations required pursuant to subdivision (b) of Section 11495.1, a county may utilize standards, procedures, and protocols currently available, and shall identify them in its county plan. Waivers shall be reevaluated in accordance with other routine periodic reevaluations by the county.

SEC. 53. Section 14132.90 of the Welfare and Institutions Code, as amended by Section 26 of Assembly Bill 2779 of the 1997–98 Regular Session, is amended to read:

14132.90. (a) As of September 15, 1995, day care habilitative services, pursuant to subdivision (c) of Section 14021 shall be provided only to alcohol and drug exposed pregnant women and women in the postpartum period, or as required by federal law.

(b) (1) Notwithstanding any other provision of law, except to the extent required by federal law, if, as of May 15, 1999, the projected costs for the 1998–99 fiscal year for outpatient drug abuse services, as described in Section 14021, exceed forty-five million dollars ($45,000,000) in state General Fund moneys, then the outpatient drug free services, as defined in Section 51341.1 of Title 22 of the California Code of Regulations, shall not be a benefit under this chapter as of July 1, 1999.

(2) Notwithstanding paragraph (1), narcotic replacement therapy and Naltrexone shall remain benefits under this chapter.

(3) Notwithstanding paragraph (1), residential care, outpatient drug free services, and day care habilitative services, for alcohol and drug exposed pregnant women and women in the postpartum period shall remain benefits under this chapter.

(c) Expenditures for services purchased at the direction of county welfare departments on behalf of CalWORKs recipients shall not be included in the computation of costs for subdivision (b).

SEC. 54. Section 15200 of the Welfare and Institutions Code, as amended by Section 33 of Chapter 606 of the Statutes of 1997, is amended to read:

15200. There is hereby appropriated out of any money in the State Treasury not otherwise appropriated the following sums:

(a) To each county for the support and maintenance of needy children, 97.5 percent of the sums specified in subdivision (a), and paragraphs (1) and (2) of subdivision (e) of Section 11450.

(b) To each county for the support and maintenance of pregnant mothers, 97.5 percent of the sums specified in subdivisions (b) and (c) of Section 11450.

(c) To each county for the support and maintenance of needy children, 40 percent of the sum necessary for the adequate care of

each child pursuant to subdivision (d) of Section 11450, after deducting federal funds available.

(d) Notwithstanding subdivision (c), the amount of funds appropriated from the General Fund in the annual Budget Act that equates to the amount claimed under the Emergency Assistance Program that has been included in the state's Temporary Assistance for Needy Families block grant for foster care maintenance payments shall be considered federal funds for the purposes of calculating the county share of cost, provided the expenditure of these funds contributes to the state meeting its federal maintenance of effort requirements.

(e) To each county for the support and care of hard-to-place adoptive children, and after deducting federal funds available, 75 percent of the nonfederal share of the amount specified in Section 16121.

(f) This section shall remain in effect only until July 1, 1995, or until two years after the implementation of the Child Welfare Services Case Management System as specified in Section 16501.5, whichever occurs last, and as of that date is repealed, unless a later enacted statute which is chaptered before July 1, 1990, or two years after the implementation of the Child Welfare Services Case Management System, deletes or extends that date.

SEC. 55. Section 15200 of the Welfare and Institutions Code, as amended by Section 34 of Chapter 606 of the Statutes of 1997, is amended to read:

15200. There is hereby appropriated out of any money in the State Treasury not otherwise appropriated the following sums:

(a) To each county for the support and maintenance of needy children, 97.5 percent of the sums specified in subdivision (a), and paragraphs (1) and (2) of subdivision (e), of Section 11450.

(b) To each county for the support and maintenance of pregnant mothers, 97.5 percent of the sum specified in subdivisions (b) and (c) of Section 11450.

(c) For the adequate care of each child pursuant to subdivision (d) of Section 11450, and after deducting federal funds available, as follows:

(1) For any county which meets the performance standards or outcome measures in Section 11215, an amount equal to 40 percent of the sum necessary for the adequate care of each child.

(2) For any county which does not meet the performance standards or outcome measures in Section 11215, an amount which shall not be less than 67.5 percent of one hundred twenty dollars ($120), and multiplied by the number of children receiving foster care in the county, added to an additional twelve dollars and fifty cents ($12.50) a month per eligible child.

(3) The department shall determine the percentage of state reimbursement for those counties which fail to meet the

requirements of subparagraph (1) according to the regulations required by subdivision (b) of Section 11215.

(d) Notwithstanding subdivision (c), the amount of funds appropriated from the General Fund in the annual Budget Act that equates to the amount claimed under the Emergency Assistance Program that has been included in the state's Temporary Assistance for Needy Families block grant for foster care maintenance payments shall be considered federal funds for the purposes of calculating the county share of cost, provided the expenditure of these funds contributes to the state meeting its federal maintenance of effort requirements.

(e) To each county for the support and care of hard-to-place adoptive children, and after deducting federal funds available, 75 percent of the nonfederal share of the amount specified in Section 16121.

(f) The State Department of Social Services shall not implement any change in the current funding ratios to counties as a reimbursement for out-of-home care placement until the development of a new performance standard system. The State Department of Social Services shall notify the Department of Finance when the new performance standard system is developed and ready for implementation. The Department of Finance, pursuant to the provisions of Section 28 of the Budget Act, shall notify the Joint Legislative Budget Committee in writing of its intent to implement a new performance standard that would impact the counties' funding allocation. The notification shall include the text of the draft regulations to implement the performance standards. Any adjustment in the county funding allocation shall not be implemented sooner than 60 days after receipt and review of the new performance standard by the Joint Legislative Budget Committee and a review of the proposed changes by the Legislative Analyst.

(g) This section shall become operative on July 1, 1995, unless the Child Welfare Services Case Management System is not implemented statewide July 1, 1993, as specified in Section 16501.5. If the Child Welfare Services Case Management System is implemented later than July 1, 1993, this section shall become operative two years after the implementation of the Child Welfare Services Case Management System.

SEC. 56. Section 15204.9 is added to the Welfare and Institutions Code, to read:

15204.9. The state shall pay 70 percent of the nonfederal administrative costs of administering the Aid to Families with Dependent Children Foster Care program under Article 5 (commencing with Section 11400) of Chapter 2.

SEC. 57. Section 18242 of the Welfare and Institutions Code is amended to read:

18242. (a) Upon application by a county board of supervisors, the department may approve demonstration projects in up to three

counties to test models of child support assurance. One of the projects shall conform to the design contained in Section 18246. The other two projects shall either test different models of child support assurance or may test the same model if the two counties in which that model is tested involve counties with different demographics.

(b) It is the intent of the Legislature that the purpose of the demonstration projects authorized by this article is to test child support assurance models as alternatives to welfare under which families with earnings and a child support order receive a guaranteed child support payment, in lieu of a grant under the CalWORKs program, from funds continuously appropriated for the CalWORKs program.

(c) A county may determine the maximum number of participants in that county, but not more than five percent of the county CalWORKs caseload or 8,000 persons, whichever is greater.

SEC. 58. Section 18244 of the Welfare and Institutions Code is amended to read:

18244. (a) A family shall be eligible to participate in the project described in Section 18246 only if, at the time of application to participate in the child assurance program, the family is receiving, or has been determined to be eligible to receive, an aid grant under Chapter 2 (commencing with Section 11200) of Part 3.

(b) A family's participation under this article shall not affect its eligibility to receive Medi-Cal and child care benefits under Chapter 2 (commencing with Section 11200) of Part 3, if otherwise eligible.

SEC. 59. Section 18245 of the Welfare and Institutions Code is amended to read:

18245. (a) A family shall be eligible to receive a child support assurance payment on behalf of a child only if the child's custodial parent has done all of the following:

(1) Assigned the child's right to collect child support to the state.

(2) Established paternity, obtained a child support order, and is using the services available under the state plan approved under Part D (commencing with Section 651) of Chapter 7 of Title 42 of the United States Code.

(3) Opted to participate in the child assurance program in lieu of cash assistance under Chapter 2 (commencing with Section 11200) or its successor program.

(b) (1) Except as provided in paragraph (2), as a condition of receiving a child support assurance payment under this article, a custodial parent shall also be required to do both of the following:

(A) Continue to provide all other relevant information that the applicant has that may be requested by the county.

(B) Appear at required interviews, conference hearings, or legal proceedings, if notified in advance and an illness or emergency does not prevent attendance.

(2) A custodial parent shall not be required to comply with paragraph (1) when compliance would make it more difficult for a

domestic violence victim to escape physical abuse or when cooperation would increase the risk of further violence or unfairly penalize the victim.

(c) In order to be eligible under this article, a child shall meet all of the following conditions:

(1) The child resides in the county.

(2) The child has a noncustodial parent living in the United States, or if not living in the United States, is subject to service of process by a state or territory of the United States.

(3) The child is under 18 years of age or, if enrolled in high school, under 19 years of age.

(4) The custodial parent is employed.

SEC. 60. Section 18246 of the Welfare and Institutions Code is amended to read:

18246. (a) A child or children shall be eligible to continue to receive a child support assurance payment under this section only if the family's income is not more than 150 percent of the federal poverty level. For family income below the federal poverty level, the earned income disregard shall be 90 percent. For income between 100 percent and 150 percent of the federal poverty level, the earned income disregard shall be incrementally decreased until the assistance benefit reaches zero at 150 percent of the federal poverty level.

(b) In any month, the child shall receive the greater of the child support paid by the noncustodial parent or the assured amount as defined in subdivision (d), less the earned income disregard specified in subdivision (a). In any month in which the noncustodial parent pays an amount of support less than the assured amount, the county shall retain the payment as reimbursement for the assured amount.

(c) For purposes of this article, the child support assurance payable to the custodial parent of one or more eligible children shall be the amount by which the support assurance payment exceeds the dollar value of the child support, if any, received on behalf of the family during the month from the noncustodial parent for the support of any eligible child or children.

(d) The monthly child support assurance payment shall be the sum of all of the following:

(1) Two hundred fifty dollars ($250) for the first eligible child.

(2) One hundred twenty-five dollars ($125) for the second eligible child, if any.

(3) Sixty-five dollars ($65) for each subsequent eligible child, if any.

SEC. 61. Section 18904 of the Welfare and Institutions Code is amended to read:

18904. Regulations, orders or standards of general application to implement, interpret or make specific the law relating to this chapter shall be adopted, amended, or repealed only in accordance with

Section 10554. The director shall also provide for the two methods as described in Section 18904.1.

SEC. 62. Section 18904.1 of the Welfare and Institutions Code is amended to read:

18904.1. (a) The director, to the extent permitted by federal law, shall establish methods for food stamp issuance in all counties which guarantee to low-income households the health-vital nutritional benefits available under this chapter and to achieve the most efficient system for program administration so as to minimize administrative costs.

(b) The director shall maintain methods for over-the-counter and mail issuance of food stamps in a county until issuance of food stamp benefits by electronic benefits transfer for all food stamp recipients in the county has been implemented pursuant to Chapter 3 (commencing with Section 10065) of Part 1.

(c) Until issuance of food stamp benefits by electronic benefits transfer has been implemented in a county for all food stamp recipients, the director shall maintain, in the county, methods for over-the-counter issuance that guarantee program accessibility in all cases where a household has been found to be in immediate need of food assistance or where a household has been determined to be eligible for the replacement of a previous issuance.

SEC. 63. 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 903

An act to add Section 1203.049 to the Penal Code, and to amend Section 10980 of the Welfare and Institutions Code, relating to fraud.

[Approved by Governor September 27, 1998. Filed with Secretary of State September 28, 1998.]

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

SECTION 1. Section 1203.049 is added to the Penal Code, to read:

1203.049. (a) Except in unusual cases where the interest of justice would best be served if the person is granted probation, probation shall not be granted to any person who violates subdivision (f) or (g) of Section 10980 of the Welfare and Institutions Code, when the violation has been committed by means of the electronic transfer of food stamp benefits, and the amount of the electronically transferred food stamp benefits exceeds one hundred thousand dollars ($100,000).

(b) The fact that the violation was committed by means of an electronic transfer of food stamp benefits and the amount of the electronically transferred food stamp benefits exceeds one hundred thousand dollars ($100,000) shall be alleged in the accusatory pleading, 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 a plea of guilty or nolo contendere or by trial by the court sitting without a jury.

(c) If probation is granted, the court shall specify on the record and shall enter on the minutes indicating that the interests of justice would best be served by that disposition of the care.

SEC. 2. Section 10980 of the Welfare and Institutions Code is amended to read:

10980. (a) Any person who, willfully and knowingly, with the intent to deceive, makes a false statement or representation or knowingly fails to disclose a material fact in order to obtain aid under the provisions of this division or who, knowing he or she is not entitled thereto, attempts to obtain aid or to continue to receive aid to which he or she is not entitled, or to receive a larger amount than that to which he or she is legally entitled, is guilty of a misdemeanor, punishable by imprisonment in the county jail for a period of not more than six months, a fine of not more than five hundred dollars ($500), or by both imprisonment and fine.

(b) Any person who knowingly makes more than one application for aid under the provisions of this division with the intent of establishing multiple entitlements for any person for the same period or who makes an application for that aid for a fictitious or nonexistent person or by claiming a false identity for any person is guilty of a felony, punishable by imprisonment in the state prison for a period of 16 months, two years, or three years, a fine of not more than five thousand dollars ($5,000), or by both imprisonment and fine, or by imprisonment in the county jail for a period of not more than one year, or a fine of not more than one thousand dollars ($1,000), or by both imprisonment and fine.

(c) Whenever any person has, by means of false statement or representation or by impersonation or other fraudulent device, obtained or retained aid under the provisions of this division for himself or herself or for a child not in fact entitled thereto, the person obtaining this aid shall be punished as follows:

(1) If the total amount of the aid obtained or retained is four hundred dollars ($400) or less, by imprisonment in the county jail for a period of not more than six months, a fine of not more than five hundred dollars ($500), or by both imprisonment and fine.

(2) If the total amount of the aid obtained or retained is more than four hundred dollars ($400), by imprisonment in the state prison for a period of 16 months, two years, or three years, a fine of not more than five thousand dollars ($5,000), or by both imprisonment and fine; or by imprisonment in the county jail for a period of not more than one year, or a fine of not more than one thousand dollars ($1,000), or by both imprisonment and fine.

(d) Any person who knowingly uses, transfers, acquires, or possesses blank authorizations to participate in the federal Food Stamp Program in any manner not authorized by Chapter 10 (commencing with Section 18900) of Part 6 with the intent to defraud is guilty of a felony, punishable by imprisonment in the state prison for a period of 16 months, two years, or three years, a fine of not more than five thousand dollars ($5,000), or by both imprisonment and fine.

(e) Any person who counterfeits or alters or knowingly uses, transfers, acquires, or possesses counterfeited or altered authorizations to participate in the federal Food Stamp Program or food stamps in any manner not authorized by the Food Stamp Act of 1964 (Public Law 88-525 and all amendments made thereto) or the federal regulations pursuant to the act is guilty of forgery.

(f) Any person who fraudulently appropriates food stamps or authorizations to participate in the federal Food Stamp Program with which he or she has been entrusted pursuant to his or her duties as a public employee is guilty of embezzlement of public funds.

(g) Whoever knowingly uses, transfers, sells, purchases, or possesses food stamps or authorizations to participate in the federal Food Stamp Program in any manner not authorized by Chapter 10 (commencing with Section 18900), of Part 6, or by the federal Food Stamp Act of 1977 (Public Law 95-113 and all amendments made thereto) is; (1) guilty of a misdemeanor if the face value of the food stamps or the authorizations to participate is four hundred dollars ($400) or less, and shall be punished by imprisonment in the county jail for a period of not more than six months, a fine of not more than five hundred dollars ($500), or by both imprisonment and fine, or (2) guilty of a felony if the face value of the food stamps or the authorizations to participate exceeds four hundred dollars ($400), and shall be punished by imprisonment in the state prison for a period of 16 months, two years, or three years, a fine of not more than five thousand dollars ($5,000), or by both imprisonment and fine or by imprisonment in the county jail for a period of not more than one year, or a fine of not more than one thousand dollars ($1,000), or by both imprisonment and fine.

(h) (1) If the violation of subdivision (f) or (g) is committed by means of an electronic transfer of benefits, in addition and consecutive to the penalties for the violation, or attempted violation, of those subdivisions, the court shall impose the following punishment:

(A) If the electronic transfer of benefits exceeds fifty thousand dollars ($50,000), an additional term of one year in state prison.

(B) If the electronic transfer of benefits exceeds one hundred fifty thousand dollars ($150,000), an additional term of two years in state prison.

(C) If the electronic transfer of benefits exceeds one million dollars ($1,000,000), an additional term of three years in state prison.

(D) If the electronic transfer of benefits exceeds two million five hundred thousand dollars ($2,500,000), an additional term of four years.

(2) In any accusatory pleading involving multiple charges of violations of subdivision (f) or (g), or both, committed by means of an electronic transfer of benefits, the additional terms provided in paragraph (1) may be imposed if the aggregate losses to the victims from all violations exceed the amounts specified in this paragraph and arise from a common scheme or plan.

(i) A person who is punished by an additional term of imprisonment under another provision of law for a violation of subdivision (f) or (g) shall not receive an additional term of imprisonment under subdivision (h).

SEC. 2.5. Section 10980 of the Welfare and Institutions Code is amended to read:

10980. (a) Any person who, willfully and knowingly, with the intent to deceive, makes a false statement or representation or knowingly fails to disclose a material fact in order to obtain aid under the provisions of this division or who, knowing he or she is not entitled thereto, attempts to obtain aid or to continue to receive aid to which he or she is not entitled, or to receive a larger amount than that to which he or she is legally entitled, is guilty of a misdemeanor, punishable by imprisonment in the county jail for a period of not more than six months, a fine of not more than five hundred dollars ($500), or by both imprisonment and fine.

(b) Any person who knowingly makes more than one application for aid under the provisions of this division with the intent of establishing multiple entitlements for any person for the same period or who makes an application for that aid for a fictitious or nonexistent person or by claiming a false identity for any person is guilty of a felony, punishable by imprisonment in the state prison for a period of 16 months, two years, or three years, a fine of not more than five thousand dollars ($5,000), or by both imprisonment and fine, or by imprisonment in the county jail for a period of not more than one year, or a fine of not more than one thousand dollars ($1,000), or by both imprisonment and fine.

(c) Whenever any person has, by means of false statement or representation or by impersonation or other fraudulent device, obtained or retained aid under the provisions of this division for himself or herself or for a child not in fact entitled thereto, the person obtaining this aid shall be punished as follows:

(1) If the total amount of the aid obtained or retained is four hundred dollars ($400) or less, by imprisonment in the county jail for a period of not more than six months, a fine of not more than five hundred dollars ($500), or by both imprisonment and fine.

(2) If the total amount of the aid obtained or retained is more than four hundred dollars ($400), by imprisonment in the state prison for a period of 16 months, two years, or three years, a fine of not more than five thousand dollars ($5,000), or by both imprisonment and fine; or by imprisonment in the county jail for a period of not more than one year, or a fine of not more than one thousand dollars ($1,000), or by both imprisonment and fine.

(d) Any person who knowingly uses, transfers, acquires, or possesses blank authorizations to participate in the federal Food Stamp Program in any manner not authorized by Chapter 10 (commencing with Section 18900) of Part 6 with the intent to defraud is guilty of a felony, punishable by imprisonment in the state prison for a period of 16 months, two years, or three years, a fine of not more than five thousand dollars ($5,000), or by both imprisonment and fine.

(e) Any person who counterfeits or alters or knowingly uses, transfers, acquires, or possesses counterfeited or altered authorizations to participate in the federal Food Stamp Program or to receive food stamps or electronically transferred benefits in any manner not authorized by the Food Stamp Act of 1964 (Public Law 88-525 and all amendments made thereto) or the federal regulations pursuant to the act is guilty of forgery.

(f) Any person who fraudulently appropriates food stamps, electronically transferred benefits, or authorizations to participate in the federal Food Stamp Program with which he or she has been entrusted pursuant to his or her duties as a public employee is guilty of embezzlement of public funds.

(g) Whoever knowingly uses, transfers, sells, purchases, or possesses food stamps, electronically transferred benefits, or authorizations to participate in the federal Food Stamp Program in any manner not authorized by Chapter 10 (commencing with Section 18900), of Part 6, or by the federal Food Stamp Act of 1977 (Public Law 95-113 and all amendments made thereto) is; (1) guilty of a misdemeanor if the face value of the food stamp benefits or the authorizations to participate is four hundred dollars ($400) or less, and shall be punished by imprisonment in the county jail for a period of not more than six months, a fine of not more than five hundred dollars ($500), or by both imprisonment and fine, or (2) guilty of a felony if the face value of the food stamps or the authorizations to

participate exceeds four hundred dollars ($400), and shall be punished by imprisonment in the state prison for a period of 16 months, two years, or three years, a fine of not more than five thousand dollars ($5,000), or by both imprisonment and fine or by imprisonment in the county jail for a period of not more than one year, or a fine of not more than one thousand dollars ($1,000), or by both imprisonment and fine.

(h) (1) If the violation of subdivision (f) or (g) is committed by means of an electronic transfer of benefits, in addition and consecutive to the penalties for the violation, or attempted violation, of those subdivisions, the court shall impose the following punishment:

(A) If the electronic transfer of benefits exceeds fifty thousand dollars ($50,000), an additional term of one year in state prison.

(B) If the electronic transfer of benefits exceeds one hundred fifty thousand dollars ($150,000), an additional term of two years in state prison.

(C) If the electronic transfer of benefits exceeds one million dollars ($1,000,000), an additional term of three years in state prison.

(D) If the electronic transfer of benefits exceeds two million five hundred thousand dollars ($2,500,000), an additional term of four years.

(2) In any accusatory pleading involving multiple charges of violations of subdivision (f) or (g), or both, committed by means of an electronic transfer of benefits, the additional terms provided in paragraph (1) may be imposed if the aggregate losses to the victims from all violations exceed the amounts specified in this paragraph and arise from a common scheme or plan.

(i) A person who is punished by an additional term of imprisonment under another provision of law for a violation of subdivision (f) or (g) shall not receive an additional term of imprisonment under subdivision (h).

SEC. 3. Section 2.5 of this bill incorporates amendments to Section 10980 of the Welfare and Institutions Code proposed by both this bill and AB 2772. 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 10980 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 2772, in which case Section 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 904

An act to add Section 74265 to the Education Code, relating to postsecondary education.

[Approved by Governor September 27, 1998. Filed with Secretary of State September 28, 1998.]

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

SECTION 1. Section 74265 is added to the Education Code, to read:

74265. (a) (1) Notwithstanding Section 74230, an action to form a new community college district from a portion of an existing community college district shall be deemed to be approved as provided by law, for purposes of Section 74250, without election, when approval of that action is given by the Board of Governors of the California Community Colleges pursuant to Section 74205, provided that the proposed new district consists of an existing community college campus and its service area, and all of the following conditions exist:

(A) The existing community college campus in the proposed new district is located in a county other than the county in which the headquarters of the existing community college district is located.

(B) The community college campus in the proposed new district is located 50 or more miles from any other campus in the existing community college district.

(C) The existing community college district has a total full-time equivalent enrollment in the 1997–98 fiscal year of not less than 6,500 students and not more than 7,000 students, and the existing community college campus in the proposed new district has a full-time equivalent enrollment in 1997–98 fiscal year of not less than 1,200 students and not more than 1,500 students.

(2) Upon the formation of a new community college district pursuant to this subdivision, the governing board of the school district in which the existing campus of the proposed new community college district is located shall constitute the governing board of the new community college district until the members of the governing board elected pursuant to subdivision (c) take office or, in the event that the voters fail to approve the action of forming the new community college district, until the new community college district

is annexed, pursuant to subdivision (b), by the community college district from which it was formed.

(b) The action to form a new community college district, as described in subdivision (a), shall be submitted for voter approval at an election that shall be called by the county superintendent of schools upon the formation of a new community college district pursuant to subdivision (a). The election shall be called in the manner prescribed in Part 4 (commencing with Section 5000), and shall be conducted at the next available regular election scheduled in the territory of districts defined in the approved proposal according to the procedures prescribed by Sections 35757 to 35764, inclusive. In the event that, pursuant to that election, the voters fail to approve that action, the new community college district formed pursuant to subdivision (a) shall be deemed to be thereupon annexed by the community college district from which it was formed.

(c) The election of the first governing board of the community college district formed pursuant to subdivision (a) shall be called and conducted together with the election provided for under subdivision (b).

(d) Notwithstanding any other provision of law, the condition set forth in paragraph (1) of subdivision (b) of Section 74157 does not apply to the action to form a new community college district described in subdivision (a) of this section. It is the intent of the Legislature that the formation of a district pursuant to this section not adversely affect the state funding of community college districts in subsequent fiscal years.

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

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

SEC. 3. This act shall become operative on July 1, 1999.

CHAPTER 905

An act to amend Section 35735.2 of, and to add Section 35735.4 to, the Education Code, relating to school finance.

[Approved by Governor September 27, 1998. Filed with Secretary of State September 28, 1998.]

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

SECTION 1. Section 35735.2 of the Education Code is amended to read:

35735.2. (a) If a newly organized school district is unable to provide the school facilities necessary to provide instructional services by employees of the district to all of the pupils who are residents of that district during the fiscal year in which the reorganization becomes effective for all purposes, the base revenue limit per unit of average daily attendance of the newly organized district shall be the blended revenue limit arrived at pursuant to paragraph (1) of subdivision (a) of Section 35735.1 as adjusted by the calculations made pursuant to subparagraphs (B), (C), and (D) of paragraph (4) of subdivision (a) of Section 35735.1 and subdivision (b) of Section 35735.1. As the newly organized school district obtains the school facilities necessary to provide instructional services by employees of the district to all or a portion of those pupils, the following adjustment shall be made to the base revenue limit per unit of average daily attendance of the district each fiscal year subsequent to the fiscal year in which the reorganization becomes effective until the fiscal year in which the district provides the facilities necessary to provide those services for all of those pupils:

(1) Determine the total number of pupils who are residents of the district to whom the district was unable to provide school facilities necessary to provide that instruction during the fiscal year in which the reorganization becomes effective for all purposes.

(2) Determine the total number of pupils identified in paragraph (1) that will attend school in school facilities located in, and receive instructional services provided by employees of, that district in the current fiscal year.

(3) Divide the number determined pursuant to paragraph (2) by the number determined pursuant to paragraph (1) to determine the percentage of pupils identified in paragraph (1) who will attend school in school facilities located in, and receive instructional services provided by employees of, that district in the current fiscal year.

(4) Multiply the numbers determined pursuant to paragraphs (2) and (3) of subdivision (a) of Section 35735.1 by the percentage determined pursuant to paragraph (3) for that fiscal year, and total the amounts. Divide that sum by the number of units of average daily attendance residing in the proposed district in the current fiscal year.

(5) Increase the base revenue limit calculated pursuant to subdivision (a) of this section for the school district by the amount arrived at pursuant to paragraph (4) as adjusted by the calculations pursuant to subparagraphs (B), (C), and (D) of paragraph (4) of subdivision (a) of Section 35735.1. In no event shall the amount determined pursuant to this paragraph exceed that amount that would otherwise be calculated pursuant to subdivision (a) of Section 35735.1.

(b) For the purposes of making the adjustments described in subdivision (a), the annual audit of the school district required pursuant to Section 41020 shall include an audit of the average daily attendance of pupils by grade level and the numbers of certificated and classified employees on which the adjustments to the base revenue limit of the district were made pursuant to paragraphs (1), (2), and (3) of subdivision (a) of Section 35735.1. Until the newly organized school district provides the school facilities necessary to provide instructional services by employees of the district to pupils who are residents of the district in the manner and in the timeframes set forth in the proposal to reorganize that was approved by the State Board of Education, the county superintendent of schools shall, for each fiscal year, inform the Superintendent of Public Instruction of the extent to which the district is providing those facilities to those pupils. The county superintendent of schools may charge the school district for the cost of preparation of the report. Based on that information, the superintendent shall make base revenue limit apportionments to the school district in a manner consistent with subdivision (a).

(c) If the newly organized school district is unable to provide the school facilities necessary to provide instructional services by employees of the district to all of the pupils who are residents of the district five years from the date on which the reorganization becomes effective for all purposes, the State Department of Education shall recommend to the State Board of Education whether or not the district should be lapsed pursuant to Article 5 (commencing with Section 35780). The State Department of Education shall make that recommendation for each fiscal year until either the school district provides the school facilities necessary to provide instructional services by employees of the district to all of the pupils who are residents of the district or the district is lapsed. Upon recommendation by the State Department of Education, the State Board of Education may direct the county committee on school district organization to lapse the school district according to the procedures set forth in Article 5 (commencing with Section 35780).

(d) This section shall not apply to any reorganization proposal approved by the State Board of Education prior to January 1, 1995.

(e) This section shall apply to school districts that meet the requirements of Section 35735.4 to the extent that a district does not have adequate school facilities necessary to provide instructional services by employees of the district to all of its pupils.

SEC. 2. Section 35735.4 is added to the Education Code, to read:

35735.4. Notwithstanding paragraphs (2) and (3) of subdivision (a) of Section 35735.1, as it read on June 30, 1998, a school district that was reorganized in the 1998–99 fiscal year, had an enrollment of fewer than 2,000 pupils in the second fiscal year prior to the fiscal year of reorganization, was wholly located within a county of the 20th class, as defined pursuant to Section 28041 of the Government Code,

and for which the criteria specified in paragraph (2) or (3), or both, of subdivision (a) of Section 35735.1, as it read on June 30, 1998, would have been met had pupils on interdistrict transfers in the second fiscal year prior to the fiscal year of reorganization attended their district of residence, may include the calculations set forth in paragraphs (2) and (3) of subdivision (a) of Section 35735.1, as it read on June 30, 1998, in the calculation of its base revenue limit per unit of average daily attendance.

CHAPTER 906

An act to amend Sections 35735.1, 35735.2, and 42127.6 of, and to add Section 35700.3 to, the Education Code, relating to school district reorganization.

[Approved by Governor September 27, 1998. Filed with Secretary of State September 28, 1998.]

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

SECTION 1. Section 35700.3 is added to the Education Code, to read:

35700.3. A petition filed under Section 35700 shall be required to reasonably identify the territory to be reorganized, which identification may include references to streets or prominent geographic features. The inclusion of legal descriptions or plat maps, or both, however, shall not be a prerequisite for the filing of a valid petition.

SEC. 2. Section 35735.1 of the Education Code is amended to read:

35735.1. (a) The base revenue limit per unit of average daily attendance for newly organized school districts shall be equal to the total of the amount of blended revenue limit per unit of average daily attendance of the affected school districts computed pursuant to paragraph (1), the amount based on salaries and benefits of classified employees computed pursuant to paragraph (2), the amount based on salaries and benefits of certificated employees calculated pursuant to paragraph (3), and the amount of the inflation adjustment calculated pursuant to paragraph (4). The following computations shall be made to determine the base revenue limit per unit of average daily attendance for the newly organized school districts:

(1) Divide the average daily attendance computed pursuant to Section 42238.5 into the base revenue limit computed pursuant to Section 42238 for each affected district, and then perform the following computation to arrive at the blended revenue limit:

(A) For each school district affected by the reorganization, multiply the amount determined pursuant to paragraph (1) by the

number of units of average daily attendance for that school district that the county superintendent of schools determines will be included in the proposed school district.

(B) Add the amounts calculated pursuant to subparagraph (A).

(2) For each affected school district in the newly organized school districts, the following computation shall be made to determine the amount to be included in the base revenue limit per unit of average daily attendance for the newly organized school districts that is based on the salaries and benefits of full-time equivalent classified employees:

(A) For each of those school districts, make the following computation to arrive at the highest average amount expended for salaries and benefits for classified full-time employees by the districts:

(i) Add the amount of all salaries and benefits for classified employees of the district, including both part-time and full-time employees.

(ii) Divide the amount computed in clause (i) by the total number of full-time equivalent classified employees in the district.

(B) Among those school districts that will make up 25 percent or more of the average daily attendance of the resulting newly organized school district, compare the amounts determined for each of those school districts pursuant to subparagraph (A) and identify the highest average amount expended for salaries and benefits for classified employees.

(C) For each of the school districts with salaries and benefits that are below the highest average amount identified in subparagraph (B) and that are included in whole or in part in the newly organized district, subtract the amount determined for the district pursuant to subparagraph (A) from the amount identified pursuant to subparagraph (B).

(D) For each of those school districts, multiply the amount determined for the district pursuant to subparagraph (C) by the number of full-time equivalent classified employees employed by the district, and then multiply by the percentage of the district's average daily attendance to be included in the new district.

(E) Add the amounts computed for each school district pursuant to subparagraph (D).

(3) For each affected school district in the newly organized school districts, the following computation shall be made to determine the amount to be included in the base revenue limit per unit of average daily attendance for the newly organized school districts that is based on the salaries and benefits of full-time equivalent certificated employees:

(A) For each of those school districts, make the following computation to determine the highest average amount expended for salaries and benefits for certificated full-time employees:

(i) Add the amount of all salaries and benefits for certificated employees, including both part-time and full-time employees.

(ii) Divide the amount determined in clause (i) by the total number of full-time equivalent certificated employees in the district.

(B) Among those school districts that will make up 25 percent or more of the average daily attendance of the resulting newly organized school district, compare the amounts determined for each school district pursuant to subparagraph (A) and identify the highest average amount expended for salaries and benefits for certificated employees.

(C) For each of the school districts with salaries and benefits that are below the highest average amount identified in subparagraph (B) and that are included in whole or in part in the newly organized school district, subtract the amount determined for the district pursuant to subparagraph (A) from the amount identified pursuant to subparagraph (B).

(D) For each of those school districts, multiply the amount determined for the district pursuant to subparagraph (C) by the number of full-time equivalent certificated employees of the school district, and then multiply by the percentage of the district's average daily attendance to be included in the new district.

(E) Add the amount calculated for each school district identified pursuant to subparagraph (D).

(4) The base revenue limit per unit of average daily attendance shall be adjusted for inflation as follows:

(A) Add the amounts determined pursuant to subparagraph (B) of paragraph (1), subparagraph (E) of paragraph (2), and subparagraph (E) of paragraph (3), and divide that sum by the number of units of average daily attendance in the newly organized school districts. The amount determined pursuant to this subparagraph shall not exceed 110 percent of the blended revenue limit per unit of average daily attendance calculated pursuant to paragraph (1).

(B) (i) Increase the amount determined pursuant to subparagraph (A) by the amount of the inflation adjustment calculated and used for apportionment purposes pursuant to Section 42238.1 for the fiscal year immediately preceding the year in which the reorganization becomes effective.

(ii) With respect to a school district that unifies effective July 1, 1997, and that has an average daily attendance in the 1996–97 fiscal year of more than 1,500 units, increase the amount determined pursuant to subparagraph (A) by an amount calculated as follows:

(I) For each component district of the newly unified district, multiply the amount of revenue limit equalization aid per unit of average daily attendance determined pursuant to Sections 42238.41, 42238.42, and 42238.43, or any other sections of law, for the 1996–97 fiscal year by the 1996–97 second principal apportionment units of average daily attendance determined pursuant to Section 42238.5 for that component district.

(II) Add the results for all component districts, and divide this amount by the sum of the 1996–97 second principal apportionment units of average daily attendance determined pursuant to Section 42238.5 for all component districts.

(C) Increase the amount determined pursuant to subparagraph (B) by the amount of the inflation adjustment calculated and used for apportionment purposes pursuant to Section 42238.1 for the fiscal year in which the reorganization becomes effective for all purposes.

(D) Increase the amount determined pursuant to subparagraph (C) by any other adjustments to the base revenue limit per unit of average daily attendance that the newly organized school districts would have been eligible to receive had they been reorganized in the fiscal year two years prior to the year in which the reorganization becomes effective for all purposes.

(b) The amount determined pursuant to subparagraph (D) of paragraph (4) of subdivision (a) shall be the base revenue limit per unit of average daily attendance for the newly organized school districts.

(c) The base revenue limit per unit of average daily attendance for the newly organized school district shall not be greater than the amount set forth in the proposal for reorganization that is approved by the State Board of Education. The Superintendent of Public Instruction may make adjustments to base revenue limit apportionments to a newly organized school district, if necessary to cause those apportionments to be consistent with this section.

(d) If the territorial jurisdiction of any school district was revised pursuant to a unification, consolidation, or other reorganization, occurring on or before July 1, 1989, that resulted in a school district having a larger territorial jurisdiction than the original school district prior to the reorganization, and a reorganization of school districts occurs on or after the effective date of the act that added this subdivision that results in a school district having a territorial jurisdiction that is substantially the same, as determined by the State Board of Education, as the territorial jurisdiction of that original school district prior to the most recent reorganization occurring on or before July 1, 1989, the revenue limit of the school district resulting from the subsequent reorganization shall be the same, notwithstanding subdivision (b), as the revenue limit that was determined for the original school district prior to the most recent reorganization occurring on or before July 1, 1989.

(e) The average daily attendance of a newly organized school district, for purposes of subdivision (d) of Section 42238, shall be the average daily attendance that is attributable to the area reorganized for the fiscal year two years prior to the fiscal year in which the new district becomes effective for all purposes.

(f) For purposes of computing average daily attendance pursuant to subdivision (d) of Section 42238 for each school district that exists prior to the reorganization and whose average daily attendance is

directly affected by the reorganization, the following calculation shall apply for the fiscal year two years prior to the fiscal year in which the newly reorganized school district becomes effective:

(1) Divide the 1982–83 fiscal year average daily attendance, computed pursuant to subdivision (d) of Section 42238, by the total average daily attendance of the district pursuant to Section 42238.5.

(2) Multiply the percentage computed pursuant to paragraph (1) by the total average daily attendance of the district calculated pursuant to Section 42238.5, excluding the average daily attendance of pupils attributable to the area reorganized.

(g) This section shall not apply to any reorganization proposal approved by the State Board of Education prior to January 1, 1995.

(h) Notwithstanding any other provision of law, this section shall not be subject to waiver by the State Board of Education pursuant to Section 33050 or by the Superintendent of Public Instruction.

SEC. 3. Section 35735.2 of the Education Code is amended to read:

35735.2. (a) If a newly organized school district is unable to provide the school facilities necessary to provide instructional services by employees of the district to all of the pupils who are residents of that district during the fiscal year in which the reorganization becomes effective for all purposes, the base revenue limit per unit of average daily attendance of the newly organized district shall be the blended revenue limit arrived at pursuant to paragraph (1) of subdivision (a) of Section 35735.1 as adjusted by the calculations made pursuant to subparagraphs (B), (C), and (D) of paragraph (4) of subdivision (a) of Section 35735.1 and subdivision (b) of Section 35735.1. As the newly organized school district obtains the school facilities necessary to provide instructional services by employees of the district to all or a portion of those pupils, the following adjustment shall be made to the base revenue limit per unit of average daily attendance of the district each fiscal year subsequent to the fiscal year in which the reorganization becomes effective until the fiscal year in which the district provides the facilities necessary to provide those services for all of those pupils:

(1) Determine the total number of pupils who are residents of the district to whom the district was unable to provide school facilities necessary to provide that instruction during the fiscal year in which the reorganization becomes effective for all purposes.

(2) Determine the total number of pupils identified in paragraph (1) that will attend school in school facilities located in, and receive instructional services provided by employees of, that district in the current fiscal year.

(3) Divide the number determined pursuant to paragraph (2) by the number determined pursuant to paragraph (1) to determine the percentage of pupils identified in paragraph (1) who will attend school in school facilities located in, and receive instructional services provided by employees of, that district in the current fiscal year.

(4) Multiply the numbers determined pursuant to paragraphs (2) and (3) of subdivision (a) of Section 35735.1 by the percentage determined pursuant to paragraph (3) for that fiscal year, and total the amounts. Divide that sum by the number of units of average daily attendance residing in the proposed district in the current fiscal year.

(5) Increase the base revenue limit calculated pursuant to subdivision (a) of this section for the school district by the amount arrived at pursuant to paragraph (4) as adjusted by the calculations pursuant to subparagraphs (B), (C), and (D) of paragraph (4) of subdivision (a) of Section 35735.1. In no event shall the amount determined pursuant to this paragraph exceed that amount that would otherwise be calculated pursuant to subdivision (a) of Section 35735.1.

(b) For the purposes of making the adjustments described in subdivision (a), the annual audit of the school district required pursuant to Section 41020 shall include an audit of the average daily attendance of pupils by grade level and the numbers of certificated and classified employees on which the adjustments to the base revenue limit of the district were made pursuant to paragraphs (1), (2), and (3) of subdivision (a) of Section 35735.1. Until the newly organized school district provides the school facilities necessary to provide instructional services by employees of the district to pupils who are residents of the district in the manner and in the timeframes set forth in the proposal to reorganize that was approved by the State Board of Education, the county superintendent of schools shall, for each fiscal year, inform the Superintendent of Public Instruction of the extent to which the district is providing those facilities to those pupils. The county superintendent of schools may charge the school district for the cost of preparation of the report. Based on that information, the superintendent shall make base revenue limit apportionments to the school district in a manner consistent with subdivision (a).

(c) If the newly organized school district is unable to provide the school facilities necessary to provide instructional services by employees of the district to all of the pupils who are residents of the district five years from the date on which the reorganization becomes effective for all purposes, the State Department of Education shall recommend to the State Board of Education whether or not the district should be lapsed pursuant to Article 5 (commencing with Section 35780). The State Department of Education shall make that recommendation for each fiscal year until either the school district provides the school facilities necessary to provide instructional services by employees of the district to all of the pupils who are residents of the district or the district is lapsed. Upon recommendation by the State Department of Education, the State Board of Education may direct the county committee on school district organization to lapse the school district according to the procedures set forth in Article 5 (commencing with Section 35780).

(d) This section shall not apply to any reorganization proposal approved by the State Board of Education prior to January 1, 1995.

SEC. 4. Section 42127.6 of the Education Code is amended to read:

42127.6. (a) If at any time during the fiscal year the county superintendent of schools determines that a school district may be unable to meet its financial obligations for the current or two subsequent fiscal years or if a school district has a qualified certification pursuant to Section 42131, he or she shall notify the governing board of the school district and the Superintendent of Public Instruction in writing of that determination and the basis for the determination. The notification shall include the assumptions used in making the determination and shall be available to the public. The county superintendent of schools shall do any or all of the following, as necessary, to ensure that the district meets its financial obligations:

(1) Assign a fiscal expert, paid for by the county superintendent, to advise the district on its financial problems.

(2) Conduct a study of the financial and budgetary conditions of the district. If, in the course of this review, the county superintendent determines that his or her office requires analytical assistance or expertise that is not available through the district, he or she may employ, on a short-term basis, with the approval of the Superintendent of Public Instruction, staff, including certified public accountants, to provide the assistance and expertise. The school district shall pay 75 percent and the county office of education shall pay 25 percent of these staff costs.

(3) Direct the school district to submit a financial projection of all fund and cash balances of the district as of June 30 of the current year and subsequent fiscal years as he or she requires.

(4) Require the district to encumber all contracts and other obligations, to prepare appropriate cash-flow analyses and monthly or quarterly budget revisions, and to appropriately record all receivables and payables.

(5) Direct the district to submit a proposal for addressing the fiscal conditions that resulted in the determination that the district may not be able to meet its financial obligations.

(6) Withhold compensation of the members of the governing board and the district superintendent for failure to provide requested financial information. This action may be appealed to the Superintendent of Public Instruction pursuant to subdivision (b).

Any contract entered into by a county superintendent of schools for the purposes of this subdivision is subject to the approval of the Superintendent of Public Instruction.

(b) Within five days of the county superintendent making the determination specified in subdivision (a), a school district may appeal the basis of the determination, and any of the proposed actions that the county superintendent has indicated that he or she will take

to further examine the financial condition of the district. The Superintendent of Public Instruction shall sustain or deny any or all parts of the appeal within 10 days.

(c) If, after taking the actions identified in subdivision (a), the county superintendent determines that a district will be unable to meet its financial obligations for the current or subsequent fiscal year, he or she shall notify the school district governing board and the Superintendent of Public Instruction in writing of that determination and the basis for that determination. The notification shall include the assumptions used in making the determination and shall be available to the public.

(d) Within five days of the county superintendent making the determination specified in subdivision (c), a school district may appeal that determination to the Superintendent of Public Instruction. The Superintendent of Public Instruction shall sustain or deny the appeal within 10 days. If the governing board of the school district appeals the determination, the county superintendent of schools may stay any action of the governing board that he or she determines is inconsistent with the district's ability to meet its financial obligations for the current or subsequent fiscal year until resolution of the appeal by the Superintendent of Public Instruction.

(e) If the appeal described in subdivision (d) is denied or not filed, or if the district has a negative certification pursuant to Section 42131, the county superintendent, in consultation with the Superintendent of Public Instruction, shall, as necessary to enable the district to meet its financial obligation, do any or all of the following:

(1) Develop and impose, in consultation with the Superintendent of Public Instruction and the school district governing board, a budget revision that will enable the district to meet its financial obligations in the current fiscal year.

(2) Stay or rescind any action that is determined to be inconsistent with the school district's ability to meet its obligations for the current or subsequent fiscal year. This includes any actions up to the point that the subsequent year's budget is approved by the county superintendent of schools. The county superintendent of schools shall inform the school district governing board in writing of his or her justification for any exercise of authority under this paragraph.

(3) Assist in developing, in consultation with the governing board of the school district, a financial plan that will enable the district to meet its future obligations.

(4) Assist in developing, in consultation with the governing board of the school district, a budget for the subsequent fiscal year. If necessary, the county superintendent of schools shall continue to work with the governing board of the school district until the budget for the subsequent year is adopted.

(5) As necessary, appoint a fiscal adviser to perform any or all of the duties prescribed by this section on his or her behalf.

(f) Any action taken by the county superintendent of schools pursuant to paragraph (1) or (2) of subdivision (e) shall be accompanied by a notification that shall include the actions to be taken, the reasons for the actions, and the assumptions used to support the necessity for these actions.

(g) This section does not authorize the county superintendent to abrogate any provision of a collective bargaining agreement that was entered into by a school district prior to the date upon which the county superintendent of schools assumed authority pursuant to subdivision (e).

(h) The school district shall pay 75 percent and the county office of education shall pay 25 percent of the administrative expenses incurred pursuant to subdivision (e) or costs associated with improving the district's financial management practices. The Superintendent of Public Instruction shall develop, and distribute to affected school districts and county offices of education, advisory guidelines regarding the appropriate amount of administrative expenses charged pursuant to this subdivision.

(i) Notwithstanding Section 42647 or 42650, or any other provision of law, a county treasurer shall not honor any warrant when, pursuant to Sections 42127 to 42127.5, inclusive, or pursuant to this section, the county superintendent or the Superintendent of Public Instruction, as appropriate, has disapproved that warrant or the order on school district funds for which a warrant was prepared.

(j) Effective upon the certification of the election results for a newly organized school district pursuant to Section 35763, the county superintendent of schools may exercise any of the powers and duties of this section regarding the reorganized school district and the other affected school districts until the reorganized school district becomes effective for all purposes in accordance with Article 4 (commencing with Section 35530) of Chapter 3 of Part 21.

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 907

An act to repeal and add Section 42238.25 to the Education Code, relating to school finance.

[Approved by Governor September 27, 1998. Filed with Secretary of State September 28, 1998.]

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

SECTION 1. Notwithstanding the limitation pertaining to the loss or gain of average daily attendance due to a reorganization or territory transfer provided for in paragraph (1) of subdivision (a) of Section 42238.5, if the Jefferson Union High School District or the Laguna Salada Union School District experiences a decline in the number of units of average daily attendance in either the 1999–2000 or 2000–01 fiscal year as a result of a reorganization of the school district pursuant to Chapter 3 (commencing with Section 35500) of Part 21, that school district may compute its fiscal year average daily attendance pursuant to Section 42238.5 in that fiscal year.

SEC. 2. The Legislature finds and declares that a statute of general applicability cannot be enacted within the meaning of subdivision (b) of Section 16 of Article IV of the California Constitution because of the unique following circumstances applicable to Jefferson Union High School District and Laguna Salada Union School District:

(1) Due to poorly defined geographic boundaries, which were drawn before housing and city boundaries were developed, the school district lines do not mirror city boundaries. As a result, in some instances children in these school districts live farther away from schools in their own districts than from schools in neighboring districts, and participate in sports and activities outside of their school district because those activities are closer to home.

(2) Enrollment has reached a plateau and will soon begin to decrease for these school districts. This will exacerbate the impact of the loss of funding due to reorganization, which will exceed any reduced costs resulting from decreased enrollment, due to fixed costs in the districts for staffing and administration.

CHAPTER 908

An act to amend Sections 12070, 12071, 12072, and 12078 of the Penal Code, relating to firearms.

[Approved by Governor September 27, 1998. Filed with Secretary of State September 28, 1998.]

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

SECTION 1. Section 12070 of the Penal Code is amended to read:

12070. (a) No person shall sell, lease, or transfer firearms unless he or she has been issued a license pursuant to Section 12071. Any person violating this section is guilty of a misdemeanor.

(b) Subdivision (a) does not include any of the following:

(1) The sale, lease, or transfer of any firearm by a person acting pursuant to operation of law, a court order, or pursuant to the Enforcement of Judgments Law (Title 9 (commencing with Section 680.010) of Part 2 of the Code of Civil Procedure), or by a person who liquidates a personal firearm collection to satisfy a court judgment.

(2) A person acting pursuant to subdivision (e) of Section 186.22a or subdivision (c) of Section 12028.

(3) The sale, lease, or transfer of a firearm by a person who obtains title to the firearm by intestate succession or by bequest or as a surviving spouse pursuant to Chapter 1 (commencing with Section 13500) of Part 2 of Division 8 of the Probate Code, provided the person disposes of the firearm within 60 days of receipt of the firearm.

(4) The infrequent sale, lease, or transfer of firearms.

(5) The sale, lease, or transfer of used firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, at gun shows or events, as specified in subparagraph (B) of paragraph (1) of subdivision (b) of Section 12071, by a person other than a licensee or dealer, provided the person has a valid federal firearms license and a current certificate of eligibility issued by the Department of Justice, as specified in Section 12071, and provided all the sales, leases, or transfers fully comply with subdivision (d) of Section 12072. However, the person shall not engage in the sale, lease, or transfer of used firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person at more than 12 gun shows or events in any calendar year and shall not sell, lease, or transfer more than 15 used firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person at any single gun show or event. In no event shall the person sell more than 75 used firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person in any calendar year.

A person described in this paragraph shall be known as a "Gun Show Trader."

The Department of Justice shall adopt regulations to administer this program and shall recover the full costs of administration from fees assessed applicants.

As used in this paragraph, the term "used firearm" means a firearm that has been sold previously at retail and is more than three years old.

(6) The activities of a law enforcement agency pursuant to Section 12084.

(7) Deliveries, sales, or transfers of firearms between or to importers and manufacturers of firearms licensed to engage in business pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(8) The sale, delivery, or transfer of firearms by manufacturers or importers licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto to dealers or wholesalers.

(9) Deliveries and transfers of firearms made pursuant to Section 12028, 12028.5, or 12030.

(10) The loan of a firearm for the purposes of shooting at targets, if the loan occurs on the premises of a target facility which holds a business or regulatory license or on the premises of any club or organization organized for the purposes of practicing shooting at targets upon established ranges, whether public or private, if the firearm is at all times kept within the premises of the target range or on the premises of the club or organization.

(11) Sales, deliveries, or transfers of firearms by manufacturers, importers, or wholesalers licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto to persons who reside outside this state who are licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto, if the sale, delivery, or transfer is in accordance with Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(12) Sales, deliveries, or transfers of firearms by persons who reside outside this state and are licensed outside this state pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto to wholesalers, manufacturers, or importers, if the sale, delivery, or transfer is in accordance with Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(13) Sales, deliveries, or transfers of firearms by wholesalers to dealers.

(14) Sales, deliveries, or transfers of firearms by persons who reside outside this state to persons licensed pursuant to Section 12071, if the sale, delivery, or transfer is in accordance with Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(15) Sales, deliveries, or transfers of firearms by persons who reside outside this state and are licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto to dealers, if the sale, delivery, or transfer is in accordance with Chapter 44 (commencing

with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(16) The delivery, sale, or transfer of an unloaded firearm by one wholesaler to another wholesaler if that firearm is intended as merchandise in the receiving wholesaler's business.

(17) The loan of an unloaded firearm or the loan of a firearm loaded with blank cartridges for use solely as a prop for a motion picture, television, or video production or entertainment or theatrical event.

(18) The delivery of an unloaded pistol, revolver, or other firearm capable of being concealed upon the person which is a curio or relic, as defined in Section 178.11 of Title 27 of the Code of Federal Regulations, by a person licensed as a collector pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto with a current certificate of eligibility issued pursuant to Section 12071 to a dealer.

(c) (1) As used in this section, "infrequent" means:

(A) For pistols, revolvers, and other firearms capable of being concealed upon the person, less than six transactions per calendar year. For this purpose, "transaction" means a single sale, lease, or transfer of any number of pistols, revolvers, or other firearms capable of being concealed upon the person.

(B) For firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, occasional and without regularity.

(2) As used in this section, "operation of law" includes, but is not limited to, any of the following:

(A) The executor or administrator of an estate, if the estate includes firearms.

(B) A secured creditor or an agent or employee thereof when the firearms are possessed as collateral for, or as a result of, a default under a security agreement under the Commercial Code.

(C) A levying officer, as defined in Section 481.140, 511.060, or 680.260 of the Code of Civil Procedure.

(D) A receiver performing his or her functions as a receiver, if the receivership estate includes firearms.

(E) A trustee in bankruptcy performing his or her duties, if the bankruptcy estate includes firearms.

(F) An assignee for the benefit of creditors performing his or her functions as an assignee, if the assignment includes firearms.

(G) A transmutation of property between spouses pursuant to Section 850 of the Family Code.

(H) Firearms received by the family of a police officer or deputy sheriff from a local agency pursuant to Section 50081 of the Government Code.

(I) The transfer of a firearm by a law enforcement agency to the person who found the firearm where the delivery is to the person as

the finder of the firearm pursuant to Article 1 (commencing with Section 2080) of Chapter 4 of Division 3 of the Civil Code.

SEC. 1.5. Section 12070 of the Penal Code is amended to read:

12070. (a) No person shall sell, lease, or transfer firearms unless he or she has been issued a license pursuant to Section 12071. Any person violating this section is guilty of a misdemeanor.

(b) Subdivision (a) does not include any of the following:

(1) The sale, lease, or transfer of any firearm by a person acting pursuant to operation of law, a court order, or pursuant to the Enforcement of Judgments Law (Title 9 (commencing with Section 680.010) of Part 2 of the Code of Civil Procedure), or by a person who liquidates a personal firearm collection to satisfy a court judgment.

(2) A person acting pursuant to subdivision (e) of Section 186.22a or subdivision (c) of Section 12028.

(3) The sale, lease, or transfer of a firearm by a person who obtains title to the firearm by intestate succession or by bequest or as a surviving spouse pursuant to Chapter 1 (commencing with Section 13500) of Part 2 of Division 8 of the Probate Code, provided the person disposes of the firearm within 60 days of receipt of the firearm.

(4) The infrequent sale, lease, or transfer of firearms.

(5) The sale, lease, or transfer of used firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, at gun shows or events, as specified in subparagraph (B) of paragraph (1) of subdivision (b) of Section 12071, by a person other than a licensee or dealer, provided the person has a valid federal firearms license and a current certificate of eligibility issued by the Department of Justice, as specified in Section 12071, and provided all the sales, leases, or transfers fully comply with subdivision (d) of Section 12072. However, the person shall not engage in the sale, lease, or transfer of used firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person at more than 12 gun shows or events in any calendar year and shall not sell, lease, or transfer more than 15 used firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person at any single gun show or event. In no event shall the person sell more than 75 used firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person in any calendar year.

A person described in this paragraph shall be known as a "Gun Show Trader."

The Department of Justice shall adopt regulations to administer this program and shall recover the full costs of administration from fees assessed applicants.

As used in this paragraph, the term "used firearm" means a firearm that has been sold previously at retail and is more than three years old.

(6) The activities of a law enforcement agency pursuant to Section 12084.

(7) Deliveries, sales, or transfers of firearms between or to importers and manufacturers of firearms licensed to engage in business pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(8) The sale, delivery, or transfer of firearms by manufacturers or importers licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto to dealers or wholesalers.

(9) Deliveries and transfers of firearms made pursuant to Section 12028, 12028.5, or 12030.

(10) The loan of a firearm for the purposes of shooting at targets, if the loan occurs on the premises of a target facility which holds a business or regulatory license or on the premises of any club or organization organized for the purposes of practicing shooting at targets upon established ranges, whether public or private, if the firearm is at all times kept within the premises of the target range or on the premises of the club or organization.

(11) Sales, deliveries, or transfers of firearms by manufacturers, importers, or wholesalers licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto to persons who reside outside this state who are licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto, if the sale, delivery, or transfer is in accordance with Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(12) Sales, deliveries, or transfers of firearms by persons who reside outside this state and are licensed outside this state pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto to wholesalers, manufacturers, or importers, if the sale, delivery, or transfer is in accordance with Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(13) Sales, deliveries, or transfers of firearms by wholesalers to dealers.

(14) Sales, deliveries, or transfers of firearms by persons who reside outside this state to persons licensed pursuant to Section 12071, if the sale, delivery, or transfer is in accordance with Chapter 44 (commencing with Section 921) of Title 18 of the United States Code, and the regulations issued pursuant thereto.

(15) Sales, deliveries, or transfers of firearms by persons who reside outside this state and are licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto to dealers, if the sale, delivery, or transfer is in accordance with Chapter 44 (commencing

with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(16) The delivery, sale, or transfer of an unloaded firearm by one wholesaler to another wholesaler if that firearm is intended as merchandise in the receiving wholesaler's business.

(17) The loan of an unloaded firearm or the loan of a firearm loaded with blank cartridges for use solely as a prop for a motion picture, television, or video production or entertainment or theatrical event.

(18) The delivery of an unloaded firearm that is a curio or relic, as defined in Section 178.11 of Title 27 of the Code of Federal Regulations, by a person licensed as a collector pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto with a current certificate of eligibility issued pursuant to Section 12071 to a dealer.

(c) (1) As used in this section, "infrequent" means:

(A) For pistols, revolvers, and other firearms capable of being concealed upon the person, less than six transactions per calendar year. For this purpose, "transaction" means a single sale, lease, or transfer of any number of pistols, revolvers, or other firearms capable of being concealed upon the person.

(B) For firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, occasional and without regularity.

(2) As used in this section, "operation of law" includes, but is not limited to, any of the following:

(A) The executor or administrator of an estate, if the estate includes firearms.

(B) A secured creditor or an agent or employee thereof when the firearms are possessed as collateral for, or as a result of, a default under a security agreement under the Commercial Code.

(C) A levying officer, as defined in Section 481.140, 511.060, or 680.260 of the Code of Civil Procedure.

(D) A receiver performing his or her functions as a receiver, if the receivership estate includes firearms.

(E) A trustee in bankruptcy performing his or her duties, if the bankruptcy estate includes firearms.

(F) An assignee for the benefit of creditors performing his or her functions as an assignee, if the assignment includes firearms.

(G) A transmutation of property between spouses pursuant to Section 850 of the Family Code.

(H) Firearms received by the family of a police officer or deputy sheriff from a local agency pursuant to Section 50081 of the Government Code.

(I) The transfer of a firearm by a law enforcement agency to the person who found the firearm where the delivery is to the person as the finder of the firearm pursuant to Article 1 (commencing with Section 2080) of Chapter 4 of Division 3 of the Civil Code.

SEC. 2. Section 12071 of the Penal Code is amended to read:

12071. (a) (1) As used in this chapter, the term "licensee," "person licensed pursuant to Section 12071," or "dealer" means a person who has all of the following:

(A) A valid federal firearms license.

(B) Any regulatory or business license, or licenses, required by local government.

(C) A valid seller's permit issued by the State Board of Equalization.

(D) A certificate of eligibility issued by the Department of Justice pursuant to paragraph (4).

(E) A license issued in the format prescribed by paragraph (6).

(F) Is among those recorded in the centralized list specified in subdivision (e).

(2) The duly constituted licensing authority of a city, county, or a city and county shall accept applications for, and may grant licenses permitting, licensees to sell firearms at retail within the city, county, or city and county. The duly constituted licensing authority shall inform applicants who are denied licenses of the reasons for the denial in writing.

(3) No license shall be granted to any applicant who fails to provide a copy of his or her valid federal firearms license, valid seller's permit issued by the State Board of Equalization, and the certificate of eligibility described in paragraph (4).

(4) A person may request a certificate of eligibility from the Department of Justice and the Department of Justice shall issue a certificate to an applicant if the department's records indicate that the applicant is not a person who is prohibited from possessing firearms.

(5) The department shall adopt regulations to administer the certificate of eligibility program and shall recover the full costs of administering the program by imposing fees assessed to applicants who apply for those certificates.

(6) A license granted by the duly constituted licensing authority of any city, county, or city and county, shall be valid for not more than one year from the date of issuance and shall be in one of the following forms:

(A) In the form prescribed by the Attorney General.

(B) A regulatory or business license that states on its face "Valid for Retail Sales of Firearms" and is endorsed by the signature of the issuing authority.

(C) A letter from the duly constituted licensing authority having primary jurisdiction for the applicant's intended business location stating that the jurisdiction does not require any form of regulatory or business license or does not otherwise restrict or regulate the sale of firearms.

(7) Local licensing authorities may assess fees to recover their full costs of processing applications for licenses.

(b) A license is subject to forfeiture for a breach of any of the following prohibitions and requirements:

(1) (A) Except as provided in subparagraphs (B) and (C), the business shall be conducted only in the buildings designated in the license.

(B) A person licensed pursuant to subdivision (a) may take possession of firearms and commence preparation of registers for the sale, delivery, or transfer of firearms at gun shows or events, as defined in Section 178.100 of Title 27 of the Code of Federal Regulations, or its successor, if the gun show or event is not conducted from any motorized or towed vehicle. A person conducting business pursuant to this subparagraph shall be entitled to conduct business as authorized herein at any gun show or event in the state without regard to the jurisdiction within this state that issued the license pursuant to subdivision (a), provided the person complies with (i) all applicable laws, including, but not limited to, the waiting period specified in subparagraph (A) of paragraph (3), and (ii) all applicable local laws, regulations, and fees, if any.

A person conducting business pursuant to this subparagraph shall publicly display his or her license issued pursuant to subdivision (a), or a facsimile thereof, at any gun show or event, as specified in this subparagraph.

(C) A person licensed pursuant to subdivision (a) may engage in the sale and transfer of firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, at events specified in subdivision (g) of Section 12078, subject to the prohibitions and restrictions contained in that subdivision.

A person licensed pursuant to subdivision (a) also may accept delivery of firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, outside the building designated in the license, provided the firearm is being donated for the purpose of sale or transfer at an auction or similar event specified in subdivision (g) of Section 12078.

(D) The firearm may be delivered to the purchaser, transferee, or person being loaned the firearm at one of the following places:

(i) The building designated in the license.

(ii) The places specified in subparagraph (B) or (C).

(iii) The place of residence of, the fixed place of business of, or on private property owned or lawfully possessed by, the purchaser, transferee, or person being loaned the firearm.

(2) The license or a copy thereof, certified by the issuing authority, shall be displayed on the premises where it can easily be seen.

(3) No firearm shall be delivered:

(A) Within 10 days of the application to purchase, or, after notice by the department pursuant to subdivision (d) of Section 12076, within 10 days of the submission to the department of any correction to the application, or within 10 days of the submission to the

department of any fee required pursuant to subdivision (e) of Section 12076, whichever is later.

(B) Unless unloaded and securely wrapped or unloaded and in a locked container.

(C) Unless the purchaser, transferee, or person being loaned the firearm presents clear evidence of his or her identity and age to the dealer.

(D) Whenever the dealer is notified by the Department of Justice that the person is in a prohibited class described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(4) No pistol, revolver, or other firearm or imitation thereof capable of being concealed upon the person, or placard advertising the sale or other transfer thereof, shall be displayed in any part of the premises where it can readily be seen from the outside.

(5) The licensee shall agree to and shall act properly and promptly in processing firearms transactions pursuant to Section 12082.

(6) The licensee shall comply with Sections 12073, 12076, and 12077, subdivisions (a) and (b) of Section 12072, and subdivision (a) of Section 12316.

(7) The licensee shall post conspicuously within the licensed premises the following warnings in block letters not less than one inch in height:

(A) "IF YOU LEAVE A LOADED FIREARM WHERE A CHILD OBTAINS AND IMPROPERLY USES IT, YOU MAY BE FINED OR SENT TO PRISON."

(B) "IF YOU KEEP A LOADED FIREARM, OR A PISTOL, REVOLVER, OR OTHER FIREARM CAPABLE OF BEING CONCEALED UPON THE PERSON, WITHIN ANY PREMISES UNDER YOUR CUSTODY OR CONTROL, AND A PERSON UNDER 16 GAINS ACCESS TO THE FIREARM, YOU MAY BE GUILTY OF A MISDEMEANOR OR A FELONY, UNLESS YOU STORED THE FIREARM IN A LOCKED CONTAINER, OR LOCKED THE FIREARM WITH A LOCKING DEVICE, TO KEEP IT FROM TEMPORARILY FUNCTIONING."

(C) "DISCHARGING FIREARMS IN POORLY VENTILATED AREAS, CLEANING FIREARMS, OR HANDLING AMMUNITION MAY RESULT IN EXPOSURE TO LEAD, A SUBSTANCE KNOWN TO CAUSE BIRTH DEFECTS, REPRODUCTIVE HARM, AND OTHER SERIOUS PHYSICAL INJURY. HAVE ADEQUATE VENTILATION AT ALL TIMES. WASH HANDS THOROUGHLY AFTER EXPOSURE."

(D) "FEDERAL REGULATIONS PROVIDE THAT IF YOU DO NOT TAKE PHYSICAL POSSESSION OF THE FIREARM THAT YOU ARE ACQUIRING OWNERSHIP OF WITHIN 30 DAYS AFTER YOU COMPLETE THE INITIAL BACKGROUND CHECK PAPERWORK, THEN YOU HAVE TO GO THROUGH THE

BACKGROUND CHECK PROCESS A SECOND TIME IN ORDER TO TAKE PHYSICAL POSSESSION OF THAT FIREARM."

(8) Commencing April 1, 1994, no pistol, revolver, or other firearm capable of being concealed upon the person shall be delivered unless the purchaser, transferee, or person being loaned the firearm presents to the dealer a basic firearms safety certificate.

(9) Commencing July 1, 1992, the licensee shall offer to provide the purchaser or transferee of a firearm, or person being loaned a firearm, with a copy of the pamphlet described in Section 12080 and may add the cost of the pamphlet, if any, to the sales price of the firearm.

(10) The licensee shall not commit an act of collusion as defined in Section 12072.

(11) The licensee shall post conspicuously within the licensed premises a detailed list of each of the following:

(A) All charges required by governmental agencies for processing firearm transfers required by Sections 12076, 12082, and 12806.

(B) All fees that the licensee charges pursuant to Sections 12082 and 12806.

(12) The licensee shall not misstate the amount of fees charged by a governmental agency pursuant to Sections 12076, 12082, and 12806.

(13) The licensee shall report the loss or theft of any firearm that is merchandise of the licensee, any firearm that the licensee takes possession of pursuant to Section 12082, or any firearm kept at the licensee's place of business within 48 hours of discovery to the appropriate law enforcement agency in the city, county, or city and county where the licensee's business premises are located.

(14) In a city and county, or in the unincorporated area of a county with a population of 200,000 persons or more according to the most recent federal decennial census or within a city with a population of 50,000 persons or more according to the most recent federal decennial census, any time the licensee is not open for business, the licensee shall store all firearms kept in his or her licensed place of business using one of the following methods as to each particular firearm:

(A) Store the firearm in a secure facility that is a part of, or that constitutes, the licensee's business premises.

(B) Secure the firearm with a hardened steel rod or cable of at least one-eighth inch in diameter through the trigger guard of the firearm. The steel rod or cable shall be secured with a hardened steel lock that has a shackle. The lock and shackle shall be protected or shielded from the use of a bolt cutter and the rod or cable shall be anchored in a manner that prevents the removal of the firearm from the premises.

(C) Store the firearm in a locked fireproof safe or vault in the licensee's business premises.

(15) The licensing authority in an unincorporated area of a county with a population less than 200,000 persons according to the most

recent federal decennial census or within a city with a population of less than 50,000 persons according to the most recent federal decennial census may impose the requirements specified in paragraph (14).

(16) Commencing January 1, 1994, the licensee shall, upon the issuance or renewal of a license, submit a copy of the same to the Department of Justice.

(17) The licensee shall maintain and make available for inspection during business hours to any peace officer, authorized local law enforcement employee, or Department of Justice employee designated by the Attorney General, upon the presentation of proper identification, a firearms transaction record.

(18) (A) On the date of receipt, the licensee shall report to the Department of Justice in a format prescribed by the department the acquisition by the licensee of the ownership of a pistol, revolver, or other firearm capable of being concealed upon the person.

(B) The provisions of this paragraph shall not apply to any of the following transactions:

(i) A transaction subject to the provisions of subdivision (n) of Section 12078.

(ii) The dealer acquired the firearm from a wholesaler.

(iii) The dealer is also licensed as a secondhand dealer pursuant to Article 4 (commencing with Section 21625) of Chapter 9 of Division 8 of the Business and Professions Code.

(iv) The dealer acquired the firearm from a person who is licensed as a manufacturer or importer to engage in those activities pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and any regulations issued pursuant thereto.

(v) The dealer acquired the firearm from a person who resides outside this state who is licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and any regulations issued pursuant thereto.

(19) The licensee shall forward in a format prescribed by the Department of Justice, information as required by the department on any firearm that is not delivered within the time period set forth in Section 178.102 (c) of Title 27 of the Code of Federal Regulations.

(c) (1) As used in this article, "clear evidence of his or her identity and age" means either of the following:

(A) A valid California driver's license.

(B) A valid California identification card issued by the Department of Motor Vehicles.

(2) As used in this article, a "basic firearms safety certificate" means a basic firearms certificate issued to the purchaser, transferee, or person being loaned the firearm by the Department of Justice pursuant to Article 8 (commencing with Section 12800) of Chapter 6.

(3) As used in this section, a "secure facility" means a building that meets all of the following specifications:

(A) All perimeter doorways shall meet one of the following:

(i) A windowless steel security door equipped with both a dead bolt and a doorknob lock.

(ii) A windowed metal door that is equipped with both a dead bolt and a doorknob lock. If the window has an opening of five inches or more measured in any direction, the window shall be covered with steel bars of at least one-half inch diameter or metal grating of at least nine gauge affixed to the exterior or interior of the door.

(iii) A metal grate that is padlocked and affixed to the licensee's premises independent of the door and doorframe.

(B) All windows are covered with steel bars.

(C) Heating, ventilating, air-conditioning, and service openings are secured with steel bars, metal grating, or an alarm system.

(D) Any metal grates have spaces no larger than six inches wide measured in any direction.

(E) Any metal screens have spaces no larger than three inches wide measured in any direction.

(F) All steel bars shall be no further than six inches apart.

(4) As used in this section, "licensed premises," "licensed place of business," "licensee's place of business," or "licensee's business premises" means the building designated in the license.

(5) For purposes of paragraph (17) of subdivision (b):

(A) A "firearms transaction record" is a record containing the same information referred to in subdivision (a) of Section 178.124, Section 178.124a, and subdivision (e) of Section 178.125 of Title 27 of the Code of Federal Regulations.

(B) A licensee shall be in compliance with the provisions of paragraph (17) of subdivision (b) if he or she maintains and makes available for inspection during business hours to any peace officer, authorized local law enforcement employee, or Department of Justice employee designated by the Attorney General, upon the presentation of proper identification, the bound book containing the same information referred to in Section 178.124a and subdivision (e) of Section 178.125 of Title 27 of the Code of Federal Regulations and the records referred to in subdivision (a) of Section 178.124 of Title 27 of the Code of Federal Regulations.

(d) Upon written request from a licensee, the licensing authority may grant an exemption from compliance with the requirements of paragraph (14) of subdivision (b) if the licensee is unable to comply with those requirements because of local ordinances, covenants, lease conditions, or similar circumstances not under the control of the licensee.

(e) Except as otherwise provided in this subdivision, the Department of Justice shall keep a centralized list of all persons licensed pursuant to subparagraphs (A) to (E), inclusive, of paragraph (1) of subdivision (a). The department may remove from this list any person who knowingly or with gross negligence violates this article. Upon removal of a dealer from this list, notification shall

be provided to local law enforcement and licensing authorities in the jurisdiction where the dealer's business is located. The department shall make information about an individual dealer available, upon request, for one of the following purposes only:

(1) For law enforcement purposes.

(2) When the information is requested by a person licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code for determining the validity of the license for firearm shipments.

(f) The Department of Justice may inspect dealers to ensure compliance with this article. The department may assess an annual fee, not to exceed eighty-five dollars ($85), to cover the reasonable cost of maintaining the list described in subdivision (e), including the cost of inspections. Dealers whose place of business is in a jurisdiction that has adopted an inspection program to ensure compliance with firearms law shall be exempt from that portion of the department's fee that relates to the cost of inspections. The applicant is responsible for providing evidence to the department that the jurisdiction in which the business is located has the inspection program.

(g) The Department of Justice shall maintain and make available upon request information concerning the number of inspections conducted and the amount of fees collected pursuant to subdivision (f), a listing of exempted jurisdictions, as defined in subdivision (f), the number of dealers removed from the centralized list defined in subdivision (e), and the number of dealers found to have violated this article with knowledge or gross negligence.

(h) Paragraph (14) or (15) of subdivision (b) shall not apply to a licensee organized as a nonprofit public benefit or mutual benefit corporation organized pursuant to Part 2 (commencing with Section 5110) or Part 3 (commencing with Section 7110) of Division 2 of the Corporations Code, if both of the following conditions are satisfied:

(1) The nonprofit public benefit or mutual benefit corporation obtained the dealer's license solely and exclusively to assist that corporation or local chapters of that corporation in conducting auctions or similar events at which firearms are auctioned off to fund the activities of that corporation or the local chapters of the corporation.

(2) The firearms are not pistols, revolvers, or other firearms capable of being concealed upon the person.

SEC. 2.5. Section 12071 of the Penal Code is amended to read:

12071. (a) (1) As used in this chapter, the term "licensee," "person licensed pursuant to Section 12071," or "dealer" means a person who has all of the following:

(A) A valid federal firearms license.

(B) Any regulatory or business license, or licenses, required by local government.

(C) A valid seller's permit issued by the State Board of Equalization.

(D) A certificate of eligibility issued by the Department of Justice pursuant to paragraph (4).

(E) A license issued in the format prescribed by paragraph (6).

(F) Is among those recorded in the centralized list specified in subdivision (e).

(2) The duly constituted licensing authority of a city, county, or a city and county shall accept applications for, and may grant licenses permitting, licensees to sell firearms at retail within the city, county, or city and county. The duly constituted licensing authority shall inform applicants who are denied licenses of the reasons for the denial in writing.

(3) No license shall be granted to any applicant who fails to provide a copy of his or her valid federal firearms license, valid seller's permit issued by the State Board of Equalization, and the certificate of eligibility described in paragraph (4).

(4) A person may request a certificate of eligibility from the Department of Justice and the Department of Justice shall issue a certificate to an applicant if the department's records indicate that the applicant is not a person who is prohibited from possessing firearms.

(5) The department shall adopt regulations to administer the certificate of eligibility program and shall recover the full costs of administering the program by imposing fees assessed to applicants who apply for those certificates.

(6) A license granted by the duly constituted licensing authority of any city, county, or city and county, shall be valid for not more than one year from the date of issuance and shall be in one of the following forms:

(A) In the form prescribed by the Attorney General.

(B) A regulatory or business license that states on its face "Valid for Retail Sales of Firearms" and is endorsed by the signature of the issuing authority.

(C) A letter from the duly constituted licensing authority having primary jurisdiction for the applicant's intended business location stating that the jurisdiction does not require any form of regulatory or business license or does not otherwise restrict or regulate the sale of firearms.

(7) Local licensing authorities may assess fees to recover their full costs of processing applications for licenses.

(b) A license is subject to forfeiture for a breach of any of the following prohibitions and requirements:

(1) (A) Except as provided in subparagraphs (B) and (C), the business shall be conducted only in the buildings designated in the license.

(B) A person licensed pursuant to subdivision (a) may take possession of firearms and commence preparation of registers for the sale, delivery, or transfer of firearms at gun shows or events, as defined in Section 178.100 of Title 27 of the Code of Federal

Regulations, or its successor, if the gun show or event is not conducted from any motorized or towed vehicle. A person conducting business pursuant to this subparagraph shall be entitled to conduct business as authorized herein at any gun show or event in the state without regard to the jurisdiction within this state that issued the license pursuant to subdivision (a), provided the person complies with (i) all applicable laws, including, but not limited to, the waiting period specified in subparagraph (A) of paragraph (3), and (ii) all applicable local laws, regulations, and fees, if any.

A person conducting business pursuant to this subparagraph shall publicly display his or her license issued pursuant to subdivision (a), or a facsimile thereof, at any gun show or event, as specified in this subparagraph.

(C) A person licensed pursuant to subdivision (a) may engage in the sale and transfer of firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, at events specified in subdivision (g) of Section 12078, subject to the prohibitions and restrictions contained in that subdivision.

A person licensed pursuant to subdivision (a) also may accept delivery of firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, outside the building designated in the license, provided the firearm is being donated for the purpose of sale or transfer at an auction or similar event specified in subdivision (g) of Section 12078.

(D) The firearm may be delivered to the purchaser, transferee, or person being loaned the firearm at one of the following places:

(i) The building designated in the license.

(ii) The places specified in subparagraph (B) or (C).

(iii) The place of residence of, the fixed place of business of, or on private property owned or lawfully possessed by, the purchaser, transferee, or person being loaned the firearm.

(2) The license or a copy thereof, certified by the issuing authority, shall be displayed on the premises where it can easily be seen.

(3) No firearm shall be delivered:

(A) Within 10 days of the application to purchase, or, after notice by the department pursuant to subdivision (d) of Section 12076, within 10 days of the submission to the department of any correction to the application, or within 10 days of the submission to the department of any fee required pursuant to subdivision (e) of Section 12076, whichever is later.

(B) Unless unloaded and securely wrapped or unloaded and in a locked container.

(C) Unless the purchaser, transferee, or person being loaned the firearm presents clear evidence of his or her identity and age to the dealer.

(D) Whenever the dealer is notified by the Department of Justice that the person is in a prohibited class described in Section 12021 or

12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(4) No pistol, revolver, or other firearm or imitation thereof capable of being concealed upon the person, or placard advertising the sale or other transfer thereof, shall be displayed in any part of the premises where it can readily be seen from the outside.

(5) The licensee shall agree to and shall act properly and promptly in processing firearms transactions pursuant to Section 12082.

(6) The licensee shall comply with Sections 12073, 12076, and 12077, subdivisions (a) and (b) of Section 12072, and subdivision (a) of Section 12316.

(7) The licensee shall post conspicuously within the licensed premises the following warnings in block letters not less than one inch in height:

(A) "IF YOU LEAVE A LOADED FIREARM WHERE A CHILD OBTAINS AND IMPROPERLY USES IT, YOU MAY BE FINED OR SENT TO PRISON."

(B) "IF YOU KEEP A LOADED FIREARM, OR A PISTOL, REVOLVER, OR OTHER FIREARM CAPABLE OF BEING CONCEALED UPON THE PERSON, WITHIN ANY PREMISES UNDER YOUR CUSTODY OR CONTROL, AND A PERSON UNDER 16 GAINS ACCESS TO THE FIREARM, YOU MAY BE GUILTY OF A MISDEMEANOR OR A FELONY, UNLESS YOU STORED THE FIREARM IN A LOCKED CONTAINER, OR LOCKED THE FIREARM WITH A LOCKING DEVICE, TO KEEP IT FROM TEMPORARILY FUNCTIONING."

(C) "DISCHARGING FIREARMS IN POORLY VENTILATED AREAS, CLEANING FIREARMS, OR HANDLING AMMUNITION MAY RESULT IN EXPOSURE TO LEAD, A SUBSTANCE KNOWN TO CAUSE BIRTH DEFECTS, REPRODUCTIVE HARM, AND OTHER SERIOUS PHYSICAL INJURY. HAVE ADEQUATE VENTILATION AT ALL TIMES. WASH HANDS THOROUGHLY AFTER EXPOSURE."

(D) "FEDERAL REGULATIONS PROVIDE THAT IF YOU DO NOT TAKE PHYSICAL POSSESSION OF THE FIREARM THAT YOU ARE ACQUIRING OWNERSHIP OF WITHIN 30 DAYS AFTER YOU COMPLETE THE INITIAL BACKGROUND CHECK PAPERWORK, THEN YOU HAVE TO GO THROUGH THE BACKGROUND CHECK PROCESS A SECOND TIME IN ORDER TO TAKE PHYSICAL POSSESSION OF THAT FIREARM."

(8) Commencing April 1, 1994, no pistol, revolver, or other firearm capable of being concealed upon the person shall be delivered unless the purchaser, transferee, or person being loaned the firearm presents to the dealer a basic firearms safety certificate.

(9) Commencing July 1, 1992, the licensee shall offer to provide the purchaser or transferee of a firearm, or person being loaned a firearm, with a copy of the pamphlet described in Section 12080 and

may add the cost of the pamphlet, if any, to the sales price of the firearm.

(10) The licensee shall not commit an act of collusion as defined in Section 12072.

(11) The licensee shall post conspicuously within the licensed premises a detailed list of each of the following:

(A) All charges required by governmental agencies for processing firearm transfers required by Sections 12076, 12082, and 12806.

(B) All fees that the licensee charges pursuant to Sections 12082 and 12806.

(12) The licensee shall not misstate the amount of fees charged by a governmental agency pursuant to Sections 12076, 12082, and 12806.

(13) The licensee shall report the loss or theft of any firearm that is merchandise of the licensee, any firearm that the licensee takes possession of pursuant to Section 12082, or any firearm kept at the licensee's place of business within 48 hours of discovery to the appropriate law enforcement agency in the city, county, or city and county where the licensee's business premises are located.

(14) In a city and county, or in the unincorporated area of a county with a population of 200,000 persons or more according to the most recent federal decennial census or within a city with a population of 50,000 persons or more according to the most recent federal decennial census, any time the licensee is not open for business, the licensee shall store all firearms kept in his or her licensed place of business using one of the following methods as to each particular firearm:

(A) Store the firearm in a secure facility that is a part of, or that constitutes, the licensee's business premises.

(B) Secure the firearm with a hardened steel rod or cable of at least one-eighth inch in diameter through the trigger guard of the firearm. The steel rod or cable shall be secured with a hardened steel lock that has a shackle. The lock and shackle shall be protected or shielded from the use of a bolt cutter and the rod or cable shall be anchored in a manner that prevents the removal of the firearm from the premises.

(C) Store the firearm in a locked fireproof safe or vault in the licensee's business premises.

(15) The licensing authority in an unincorporated area of a county with a population less than 200,000 persons according to the most recent federal decennial census or within a city with a population of less than 50,000 persons according to the most recent federal decennial census may impose the requirements specified in paragraph (14).

(16) Commencing January 1, 1994, the licensee shall, upon the issuance or renewal of a license, submit a copy of the same to the Department of Justice.

(17) The licensee shall maintain and make available for inspection during business hours to any peace officer, authorized local law

enforcement employee, or Department of Justice employee designated by the Attorney General, upon the presentation of proper identification, a firearms transaction record.

(18) (A) On the date of receipt, the licensee shall report to the Department of Justice in a format prescribed by the department the acquisition by the licensee of the ownership of a pistol, revolver, or other firearm capable of being concealed upon the person.

(B) The provisions of this paragraph shall not apply to any of the following transactions:

(i) A transaction subject to the provisions of subdivision (n) of Section 12078.

(ii) The dealer acquired the firearm from a wholesaler.

(iii) The dealer is also licensed as a secondhand dealer pursuant to Article 4 (commencing with Section 21625) of Chapter 9 of Division 8 of the Business and Professions Code.

(iv) The dealer acquired the firearm from a person who is licensed as a manufacturer or importer to engage in those activities pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and any regulations issued pursuant thereto.

(v) The dealer acquired the firearm from a person who resides outside this state who is licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and any regulations issued pursuant thereto.

(19) The licensee shall forward in a format prescribed by the Department of Justice, information as required by the department on any firearm that is not delivered within the time period set forth in Section 178.102 (c) of Title 27 of the Code of Federal Regulations.

(c) (1) As used in this article, "clear evidence of his or her identity and age" means either of the following:

(A) A valid California driver's license.

(B) A valid California identification card issued by the Department of Motor Vehicles.

(2) As used in this article, a "basic firearms safety certificate" means a basic firearms certificate issued to the purchaser, transferee, or person being loaned the firearm by the Department of Justice pursuant to Article 8 (commencing with Section 12800) of Chapter 6.

(3) As used in this section, a "secure facility" means a building that meets all of the following specifications:

(A) All perimeter doorways shall meet one of the following:

(i) A windowless steel security door equipped with both a dead bolt and a doorknob lock.

(ii) A windowed metal door that is equipped with both a dead bolt and a doorknob lock. If the window has an opening of five inches or more measured in any direction, the window shall be covered with steel bars of at least one-half inch diameter or metal grating of at least nine gauge affixed to the exterior or interior of the door.

(iii) A metal grate that is padlocked and affixed to the licensee's premises independent of the door and doorframe.

(B) All windows are covered with steel bars.

(C) Heating, ventilating, air-conditioning, and service openings are secured with steel bars, metal grating, or an alarm system.

(D) Any metal grates have spaces no larger than six inches wide measured in any direction.

(E) Any metal screens have spaces no larger than three inches wide measured in any direction.

(F) All steel bars shall be no further than six inches apart.

(4) As used in this section, "licensed premises," "licensed place of business," "licensee's place of business," or "licensee's business premises" means the building designated in the license.

(5) For purposes of paragraph (17) of subdivision (b):

(A) A "firearms transaction record" is a record containing the same information referred to in subdivision (a) of Section 178.124, Section 178.124a, and subdivision (e) of Section 178.125 of Title 27 of the Code of Federal Regulations.

(B) A licensee shall be in compliance with the provisions of paragraph (17) of subdivision (b) if he or she maintains and makes available for inspection during business hours to any peace officer, authorized local law enforcement employee, or Department of Justice employee designated by the Attorney General, upon the presentation of proper identification, the bound book containing the same information referred to in Section 178.124a and subdivision (e) of Section 178.125 of Title 27 of the Code of Federal Regulations and the records referred to in subdivision (a) of Section 178.124 of Title 27 of the Code of Federal Regulations.

(d) Upon written request from a licensee, the licensing authority may grant an exemption from compliance with the requirements of paragraph (14) of subdivision (b) if the licensee is unable to comply with those requirements because of local ordinances, covenants, lease conditions, or similar circumstances not under the control of the licensee.

(e) Except as otherwise provided in this subdivision, the Department of Justice shall keep a centralized list of all persons licensed pursuant to subparagraphs (A) to (E), inclusive, of paragraph (1) of subdivision (a). The department may remove from this list any person who knowingly or with gross negligence violates this article. Upon removal of a dealer from this list, notification shall be provided to local law enforcement and licensing authorities in the jurisdiction where the dealer's business is located. The department shall make information about an individual dealer available, upon request, for one of the following purposes only:

(1) For law enforcement purposes.

(2) When the information is requested by a person licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18

of the United States Code for determining the validity of the license for firearm shipments.

(3) When information is requested by a person promoting, sponsoring, operating, or otherwise organizing a show or event as defined in Section 178.100 of Title 27 of the Code of Federal Regulations, or its successor, who possesses a valid certificate of eligibility issued pursuant to Section 12071.1, if that information is requested by the person to determine the eligibility of a prospective participant in a gun show or event to conduct transactions as a firearms dealer pursuant to subparagraph (B) of paragraph (1) of subdivision (b). Information provided pursuant to this paragraph shall be limited to information necessary to corroborate an individual's current license status.

(f) The Department of Justice may inspect dealers to ensure compliance with this article. The department may assess an annual fee, not to exceed eighty-five dollars ($85), to cover the reasonable cost of maintaining the list described in subdivision (e), including the cost of inspections. Dealers whose place of business is in a jurisdiction that has adopted an inspection program to ensure compliance with firearms law shall be exempt from that portion of the department's fee that relates to the cost of inspections. The applicant is responsible for providing evidence to the department that the jurisdiction in which the business is located has the inspection program.

(g) The Department of Justice shall maintain and make available upon request information concerning the number of inspections conducted and the amount of fees collected pursuant to subdivision (f), a listing of exempted jurisdictions, as defined in subdivision (f), the number of dealers removed from the centralized list defined in subdivision (e), and the number of dealers found to have violated this article with knowledge or gross negligence.

(h) Paragraph (14) or (15) of subdivision (b) shall not apply to a licensee organized as a nonprofit public benefit or mutual benefit corporation organized pursuant to Part 2 (commencing with Section 5110) or Part 3 (commencing with Section 7110) of Division 2 of the Corporations Code, if both of the following conditions are satisfied:

(1) The nonprofit public benefit or mutual benefit corporation obtained the dealer's license solely and exclusively to assist that corporation or local chapters of that corporation in conducting auctions or similar events at which firearms are auctioned off to fund the activities of that corporation or the local chapters of the corporation.

(2) The firearms are not pistols, revolvers, or other firearms capable of being concealed upon the person.

SEC. 3. Section 12072 of the Penal Code is amended to read:

12072. (a) (1) No person, corporation, or firm shall knowingly supply, deliver, sell, or give possession or control of a firearm to any person within any of the classes prohibited by Section 12021 or 12021.1.

(2) No person, corporation, or dealer shall sell, supply, deliver, or give possession or control of a firearm to any person whom he or she has cause to believe to be within any of the classes prohibited by Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(3) (A) No person, corporation, or firm shall sell, loan, or transfer a firearm to a minor.

(B) Subparagraph (A) shall not apply to or affect those circumstances set forth in subdivision (p) of Section 12078.

(4) No person, corporation, or dealer shall sell, loan, or transfer a firearm to any person whom he or she knows or has cause to believe is not the actual purchaser or transferee of the firearm, or to any person who is not the person actually being loaned the firearm, if the person, corporation, or dealer has either of the following:

(A) Knowledge that the firearm is to be subsequently loaned, sold, or transferred to avoid the provisions of subdivision (c) or (d).

(B) Knowledge that the firearm is to be subsequently loaned, sold, or transferred to avoid the requirements of any exemption to the provisions of subdivision (c) or (d).

(5) No person, corporation, or dealer shall acquire a firearm for the purpose of selling, transferring, or loaning the firearm, if the person, corporation, or dealer has either of the following:

(A) In the case of a dealer, intent to violate subdivision (b) or (c).

(B) In any other case, intent to avoid either of the following:

(i) The provisions of subdivision (d).

(ii) The requirements of any exemption to the provisions of subdivision (d).

(6) The dealer shall comply with the provisions of paragraph (18) of subdivision (b) of Section 12071.

(7) The dealer shall comply with the provisions of paragraph (19) of subdivision (b) of Section 12071.

(b) No person licensed under Section 12071 shall supply, sell, deliver, or give possession or control of a pistol, revolver, or firearm capable of being concealed upon the person to any person under the age of 21 years or any other firearm to a person under the age of 18 years.

(c) No dealer, whether or not acting pursuant to Section 12082, shall deliver a firearm to a person, as follows:

(1) Within 10 days of the application to purchase, or, after notice by the department pursuant to subdivision (d) of Section 12076, within 10 days of the submission to the department of any correction to the application, or within 10 days of the submission to the department of any fee required pursuant to subdivision (e) of Section 12076, whichever is later.

(2) Unless unloaded and securely wrapped or unloaded and in a locked container.

(3) Unless the purchaser, transferee, or person being loaned the firearm presents clear evidence of his or her identity and age, as defined in Section 12071, to the dealer.

(4) Whenever the dealer is notified by the Department of Justice that the person is in a prohibited class described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(5) Commencing April 1, 1994, no pistol, revolver, or other firearm capable of being concealed upon the person shall be delivered unless the purchaser, transferee, or person being loaned the firearm presents to the dealer a basic firearms safety certificate.

(d) Where neither party to the transaction holds a dealer's license issued pursuant to Section 12071, the parties to the transaction shall complete the sale, loan, or transfer of that firearm through either of the following:

(1) A licensed dealer pursuant to Section 12082.

(2) A law enforcement agency pursuant to Section 12084.

(e) No person may commit an act of collusion relating to Article 8 (commencing with Section 12800) of Chapter 6. For purposes of this section and Section 12071, collusion may be proven by any one of the following factors:

(1) Answering a test applicant's questions during an objective test relating to basic firearms safety.

(2) Knowingly grading the examination falsely.

(3) Providing an advance copy of the test to an applicant.

(4) Taking or allowing another person to take the basic firearms safety course for one who is the applicant for the basic firearms safety certificate.

(5) Allowing another to take the objective test for the applicant, purchaser, or transferee.

(6) Allowing others to give unauthorized assistance during the examination.

(7) Reference to materials during the examination and cheating by the applicant.

(8) Providing originals or photocopies of the objective test, or any version thereof, to any person other than as specified in subdivision (f) of Section 12805.

(f) (1) No person who is licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code shall deliver, sell, or transfer a firearm to a person who is licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and whose licensed premises are located in this state unless one of the following conditions is met:

(A) The person presents proof of licensure pursuant to Section 12071 to that person.

(B) The person presents proof that he or she is exempt from licensure under Section 12071 to that person, in which case the

person also shall present proof that the transaction is also exempt from the provisions of subdivision (d).

(2) (A) On or after January 1, 1998, within 60 days of bringing a pistol, revolver, or other firearm capable of being concealed upon the person into this state, a personal handgun importer shall do one of the following:

(i) Forward by prepaid mail or deliver in person to the Department of Justice, a report prescribed by the department including information concerning that individual and a description of the firearm in question.

(ii) Sell or transfer the firearm in accordance with the provisions of subdivision (d) or in accordance with the provisions of an exemption from subdivision (d).

(iii) Sell or transfer the firearm to a dealer licensed pursuant to Section 12071.

(iv) Sell or transfer the firearm to a sheriff or police department.

(B) If the personal handgun importer sells or transfers the pistol, revolver, or other firearm capable of being concealed upon the person pursuant to subdivision (d) of Section 12072 and the sale or transfer cannot be completed by the dealer to the purchaser or transferee, and the firearm can be returned to the personal handgun importer, the personal handgun importer shall have complied with the provisions of this paragraph.

(C) The provisions of this paragraph are cumulative and shall not be construed as restricting the application of any other law. However, an act or omission punishable in different ways by this section and different provisions of the Penal Code shall not be punished under more than one provision.

(D) (i) On and after January 1, 1998, the department shall conduct a public education and notification program regarding this paragraph to ensure a high degree of publicity of the provisions of this paragraph.

(ii) As part of the public education and notification program described in this subparagraph, the department shall do all of the following:

(I) Work in conjunction with the Department of Motor Vehicles to ensure that any person who is subject to this paragraph is advised of the provisions of this paragraph, and provided with blank copies of the report described in clause (i) of subparagraph (A) at the time that person applies for a California driver's license or registers his or her motor vehicle in accordance with the Vehicle Code.

(II) Make the reports referred to in clause (i) of subparagraph (A) available to dealers licensed pursuant to Section 12071.

(III) Make the reports referred to in clause (i) of subparagraph (A) available to law enforcement agencies.

(IV) Make persons subject to the provisions of this paragraph aware of the fact that reports referred to in clause (i) of subparagraph (A) may be completed at either the licensed premises of dealers

licensed pursuant to Section 12071 or at law enforcement agencies, that it is advisable to do so for the sake of accuracy and completeness of the reports, that prior to transporting a pistol, revolver, or other firearm capable of being concealed upon the person to a law enforcement agency in order to comply with subparagraph (A), the person should give prior notice to the law enforcement agency that he or she is doing so, and that in any event, the pistol, revolver, or other firearm capable of being concealed upon the person should be transported unloaded and in a locked container.

(iii) Any costs incurred by the department to implement this paragraph shall be absorbed by the department within its existing budget and the fees in the Dealers' Record of Sale Special Account allocated for implementation of this subparagraph pursuant to Section 12076.

(3) Where a person who is licensed as a collector pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto, whose licensed premises are within this state, acquires a pistol, revolver, or other firearm capable of being concealed upon the person that is a curio or relic, as defined in Section 178.11 of Title 27 of the Code of Federal Regulations, outside of this state, takes actual possession of that firearm outside of this state pursuant to the provisions of subsection (j) of Section 923 of Title 18 of the United States Code, as amended by Public Law 104-208, and transports that firearm into this state, within five days of that licensed collector transporting that firearm into this state, he or she shall report to the department in a format prescribed by the department his or her acquisition of that firearm.

(4) (A) It is the intent of the Legislature that a violation of paragraph (2) or (3) shall not constitute a "continuing offense" and the statute of limitations for commencing a prosecution for a violation of paragraph (2) or (3) commences on the date that the applicable grace period specified in paragraph (2) or (3) expires.

(B) Paragraphs (2) and (3) shall not apply to a person who reports his or her ownership of a pistol, revolver, or other firearm capable of being concealed upon the person after the applicable grace period specified in paragraph (2) or (3) expires if evidence of that violation arises only as the result of the person submitting the report described in paragraph (2) or (3).

(g) (1) Except as provided in paragraph (2) or (3), a violation of this section is a misdemeanor.

(2) If any of the following circumstances apply, a violation of this section is punishable by imprisonment in the state prison for two, three, or four years:

(A) If the violation is of paragraph (1) of subdivision (a).

(B) If the defendant has a prior conviction of violating this section or former Section 12100 of this code or Section 8101 of the Welfare and Institutions Code.

(C) If the defendant has a prior conviction of violating any offense specified in subdivision (b) of Section 12021.1 or of a violation of Section 12020, 12220, or 12520, or of former Section 12560.

(D) If the defendant is in a prohibited class described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(E) A violation of this section by a person who actively participates in a "criminal street gang" as defined in Section 186.22.

(F) A violation of subdivision (b) involving the delivery of any firearm to a person who the dealer knows, or should know, is a minor.

(3) If any of the following circumstances apply, a violation of this section shall be punished by imprisonment in a county jail not exceeding one year or in the state prison, or by a fine not to exceed one thousand dollars ($1,000), or by both the fine and imprisonment:

(A) A violation of paragraph (2) of subdivision (a).

(B) A violation of paragraph (3) of subdivision (a) involving the sale, loan, or transfer of a pistol, revolver, or other firearm capable of being concealed upon the person to a minor.

(C) A violation of paragraph (4) of subdivision (a).

(D) A violation of paragraph (5) of subdivision (a).

(E) A violation of subdivision (b) involving the delivery of a pistol, revolver, or other firearm capable of being concealed upon the person.

(F) A violation of paragraph (1), (3), (4), or (5) of subdivision (c) involving a pistol, revolver, or other firearm capable of being concealed upon the person.

(G) A violation of subdivision (d) involving a pistol, revolver, or other firearm capable of being concealed upon the person.

(H) A violation of subdivision (e).

(4) If both of the following circumstances apply, an additional term of imprisonment in the state prison for one, two, or three years shall be imposed in addition and consecutive to the sentence prescribed:

(A) A violation of paragraph (2) of subdivision (a) or subdivision (b).

(B) The firearm transferred in violation of paragraph (2) of subdivision (a) or subdivision (b) is used in the subsequent commission of a felony for which a conviction is obtained and the prescribed sentence is imposed.

SEC. 3.5. Section 12072 of the Penal Code is amended to read:

12072. (a) (1) No person, corporation, or firm shall knowingly supply, deliver, sell, or give possession or control of a firearm to any person within any of the classes prohibited by Section 12021 or 12021.1.

(2) No person, corporation, or dealer shall sell, supply, deliver, or give possession or control of a firearm to any person whom he or she has cause to believe to be within any of the classes prohibited by

Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(3) (A) No person, corporation, or firm shall sell, loan, or transfer a firearm to a minor.

(B) Subparagraph (A) shall not apply to or affect those circumstances set forth in subdivision (p) of Section 12078.

(4) No person, corporation, or dealer shall sell, loan, or transfer a firearm to any person whom he or she knows or has cause to believe is not the actual purchaser or transferee of the firearm, or to any person who is not the person actually being loaned the firearm, if the person, corporation, or dealer has either of the following:

(A) Knowledge that the firearm is to be subsequently loaned, sold, or transferred to avoid the provisions of subdivision (c) or (d).

(B) Knowledge that the firearm is to be subsequently loaned, sold, or transferred to avoid the requirements of any exemption to the provisions of subdivision (c) or (d).

(5) No person, corporation, or dealer shall acquire a firearm for the purpose of selling, transferring, or loaning the firearm, if the person, corporation, or dealer has either of the following:

(A) In the case of a dealer, intent to violate subdivision (b) or (c).

(B) In any other case, intent to avoid either of the following:

(i) The provisions of subdivision (d).

(ii) The requirements of any exemption to the provisions of subdivision (d).

(6) The dealer shall comply with the provisions of paragraph (18) of subdivision (b) of Section 12071.

(7) The dealer shall comply with the provisions of paragraph (19) of subdivision (b) of Section 12071.

(8) No person shall sell or otherwise transfer his or her ownership in a pistol, revolver, or other firearm capable of being concealed upon the person unless the firearm bears either:

(A) The name of the manufacturer, the manufacturer's make or model, and a manufacturer's serial number assigned to that firearm.

(B) The identification number or mark assigned to the firearm by the Department of Justice pursuant to Section 12092.

(b) No person licensed under Section 12071 shall supply, sell, deliver, or give possession or control of a pistol, revolver, or firearm capable of being concealed upon the person to any person under the age of 21 years or any other firearm to a person under the age of 18 years.

(c) No dealer, whether or not acting pursuant to Section 12082, shall deliver a firearm to a person, as follows:

(1) Within 10 days of the application to purchase, or, after notice by the department pursuant to subdivision (d) of Section 12076, within 10 days of the submission to the department of any correction to the application, or within 10 days of the submission to the department of any fee required pursuant to subdivision (e) of Section 12076, whichever is later.

(2) Unless unloaded and securely wrapped or unloaded and in a locked container.

(3) Unless the purchaser, transferee, or person being loaned the firearm presents clear evidence of his or her identity and age, as defined in Section 12071, to the dealer.

(4) Whenever the dealer is notified by the Department of Justice that the person is in a prohibited class described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(5) Commencing April 1, 1994, no pistol, revolver, or other firearm capable of being concealed upon the person shall be delivered unless the purchaser, transferee, or person being loaned the firearm presents to the dealer a basic firearms safety certificate.

(d) Where neither party to the transaction holds a dealer's license issued pursuant to Section 12071, the parties to the transaction shall complete the sale, loan, or transfer of that firearm through either of the following:

(1) A licensed dealer pursuant to Section 12082.

(2) A law enforcement agency pursuant to Section 12084.

(e) No person may commit an act of collusion relating to Article 8 (commencing with Section 12800) of Chapter 6. For purposes of this section and Section 12071, collusion may be proven by any one of the following factors:

(1) Answering a test applicant's questions during an objective test relating to basic firearms safety.

(2) Knowingly grading the examination falsely.

(3) Providing an advance copy of the test to an applicant.

(4) Taking or allowing another person to take the basic firearms safety course for one who is the applicant for the basic firearms safety certificate.

(5) Allowing another to take the objective test for the applicant, purchaser, or transferee.

(6) Allowing others to give unauthorized assistance during the examination.

(7) Reference to materials during the examination and cheating by the applicant.

(8) Providing originals or photocopies of the objective test, or any version thereof, to any person other than as specified in subdivision (f) of Section 12805.

(f) (1) No person who is licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code shall deliver, sell, or transfer a firearm to a person who is licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and whose licensed premises are located in this state unless one of the following conditions is met:

(A) The person presents proof of licensure pursuant to Section 12071 to that person.

(B) The person presents proof that he or she is exempt from licensure under Section 12071 to that person, in which case the person also shall present proof that the transaction is also exempt from the provisions of subdivision (d).

(2) (A) On or after January 1, 1998, within 60 days of bringing a pistol, revolver, or other firearm capable of being concealed upon the person into this state, a personal handgun importer shall do one of the following:

(i) Forward by prepaid mail or deliver in person to the Department of Justice, a report prescribed by the department including information concerning that individual and a description of the firearm in question.

(ii) Sell or transfer the firearm in accordance with the provisions of subdivision (d) or in accordance with the provisions of an exemption from subdivision (d).

(iii) Sell or transfer the firearm to a dealer licensed pursuant to Section 12071.

(iv) Sell or transfer the firearm to a sheriff or police department.

(B) If the personal handgun importer sells or transfers the pistol, revolver, or other firearm capable of being concealed upon the person pursuant to subdivision (d) of Section 12072 and the sale or transfer cannot be completed by the dealer to the purchaser or transferee, and the firearm can be returned to the personal handgun importer, the personal handgun importer shall have complied with the provisions of this paragraph.

(C) The provisions of this paragraph are cumulative and shall not be construed as restricting the application of any other law. However, an act or omission punishable in different ways by this section and different provisions of the Penal Code shall not be punished under more than one provision.

(D) (i) On and after January 1, 1998, the department shall conduct a public education and notification program regarding this paragraph to ensure a high degree of publicity of the provisions of this paragraph.

(ii) As part of the public education and notification program described in this subparagraph, the department shall do all of the following:

(I) Work in conjunction with the Department of Motor Vehicles to ensure that any person who is subject to this paragraph is advised of the provisions of this paragraph, and provided with blank copies of the report described in clause (i) of subparagraph (A) at the time that person applies for a California driver's license or registers his or her motor vehicle in accordance with the Vehicle Code.

(II) Make the reports referred to in clause (i) of subparagraph (A) available to dealers licensed pursuant to Section 12071.

(III) Make the reports referred to in clause (i) of subparagraph (A) available to law enforcement agencies.

(IV) Make persons subject to the provisions of this paragraph aware of the fact that reports referred to in clause (i) of subparagraph (A) may be completed at either the licensed premises of dealers licensed pursuant to Section 12071 or at law enforcement agencies, that it is advisable to do so for the sake of accuracy and completeness of the reports, that prior to transporting a pistol, revolver, or other firearm capable of being concealed upon the person to a law enforcement agency in order to comply with subparagraph (A), the person should give prior notice to the law enforcement agency that he or she is doing so, and that in any event, the pistol, revolver, or other firearm capable of being concealed upon the person should be transported unloaded and in a locked container.

(iii) Any costs incurred by the department to implement this paragraph shall be absorbed by the department within its existing budget and the fees in the Dealers' Record of Sale Special Account allocated for implementation of this subparagraph pursuant to Section 12076.

(3) Where a person who is licensed as a collector pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto, whose licensed premises are within this state, acquires a pistol, revolver, or other firearm capable of being concealed upon the person that is a curio or relic, as defined in Section 178.11 of Title 27 of the Code of Federal Regulations, outside of this state, takes actual possession of that firearm outside of this state pursuant to the provisions of subsection (j) of Section 923 of Title 18 of the United States Code, as amended by Public Law 104-208, and transports that firearm into this state, within five days of that licensed collector transporting that firearm into this state, he or she shall report to the department in a format prescribed by the department his or her acquisition of that firearm.

(4) (A) It is the intent of the Legislature that a violation of paragraph (2) or (3) shall not constitute a "continuing offense" and the statute of limitations for commencing a prosecution for a violation of paragraph (2) or (3) commences on the date that the applicable grace period specified in paragraph (2) or (3) expires.

(B) Paragraphs (2) and (3) shall not apply to a person who reports his or her ownership of a pistol, revolver, or other firearm capable of being concealed upon the person after the applicable grace period specified in paragraph (2) or (3) expires if evidence of that violation arises only as the result of the person submitting the report described in paragraph (2) or (3).

(g) (1) Except as provided in paragraph (2) or (3), a violation of this section is a misdemeanor.

(2) If any of the following circumstances apply, a violation of this section is punishable by imprisonment in the state prison for two, three, or four years.

(A) If the violation is of paragraph (1) of subdivision (a).

(B) If the defendant has a prior conviction of violating this section or former Section 12100 of this code or Section 8101 of the Welfare and Institutions Code.

(C) If the defendant has a prior conviction of violating any offense specified in subdivision (b) of Section 12021.1 or of a violation of Section 12020, 12220, or 12520, or of former Section 12560.

(D) If the defendant is in a prohibited class described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(E) A violation of this section by a person who actively participates in a "criminal street gang" as defined in Section 186.22.

(F) A violation of subdivision (b) involving the delivery of any firearm to a person who the dealer knows, or should know, is a minor.

(3) If any of the following circumstances apply, a violation of this section shall be punished by imprisonment in a county jail not exceeding one year or in the state prison, or by a fine not to exceed one thousand dollars ($1,000), or by both the fine and imprisonment.

(A) A violation of paragraph (2), (4), or (5), of subdivision (a).

(B) A violation of paragraph (3) of subdivision (a) involving the sale, loan, or transfer of a pistol, revolver, or other firearm capable of being concealed upon the person to a minor.

(C) A violation of subdivision (b) involving the delivery of a pistol, revolver, or other firearm capable of being concealed upon the person.

(D) A violation of paragraph (1), (3), (4), or (5) of subdivision (c) involving a pistol, revolver, or other firearm capable of being concealed upon the person.

(E) A violation of subdivision (d) involving a pistol, revolver, or other firearm capable of being concealed upon the person.

(F) A violation of subdivision (e).

(4) If both of the following circumstances apply, an additional term of imprisonment in the state prison for one, two, or three years shall be imposed in addition and consecutive to the sentence prescribed:

(A) A violation of paragraph (2) of subdivision (a) or subdivision (b).

(B) The firearm transferred in violation of paragraph (2) of subdivision (a) or subdivision (b) is used in the subsequent commission of a felony for which a conviction is obtained and the prescribed sentence is imposed.

SEC. 4. Section 12078 of the Penal Code is amended to read:

12078. (a) (1) The waiting periods described in Sections 12071, 12072, and 12084 shall not apply to deliveries, transfers, or sales of firearms made to persons properly identified as full-time paid peace officers as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, provided that the peace officers are authorized by their employer to carry firearms while in the performance of their duties. Proper identification is defined as verifiable written

certification from the head of the agency by which the purchaser or transferee is employed, identifying the purchaser or transferee as a peace officer who is authorized to carry firearms while in the performance of his or her duties, and authorizing the purchase or transfer. The certification shall be delivered to the dealer or local law enforcement agency acting pursuant to Section 12084 at the time of purchase or transfer and the purchaser or transferee shall identify himself or herself as the person authorized in the certification. The dealer or local law enforcement agency shall keep the certification with the record of sale, or LEFT, as the case may be. On the date that the delivery, sale, or transfer is made, the dealer delivering the firearm or the law enforcement agency processing the transaction pursuant to Section 12084 shall forward by prepaid mail to the Department of Justice a report of the transaction pursuant to subdivision (b) or (c) of Section 12077 or Section 12084. If electronic or telephonic transfer of applicant information is used, on the date that the application to purchase is completed, the dealer delivering the firearm shall transmit to the Department of Justice an electronic or telephonic report of the transaction as is indicated in subdivision (b) or (c) of Section 12077.

(2) The preceding provisions of this article do not apply to deliveries, transfers, or sales of firearms made to authorized law enforcement representatives of cities, counties, cities and counties, or state or federal governments for exclusive use by those governmental agencies if, prior to the delivery, transfer, or sale of these firearms, written authorization from the head of the agency authorizing the transaction is presented to the person from whom the purchase, delivery, or transfer is being made. Proper written authorization is defined as verifiable written certification from the head of the agency by which the purchaser or transferee is employed, identifying the employee as an individual authorized to conduct the transaction, and authorizing the transaction for the exclusive use of the agency by which he or she is employed. Within 10 days of the date a pistol, revolver, or other firearm capable of being concealed upon the person is acquired by the agency, a record of the same shall be entered as an institutional weapon into the Automated Firearms System (AFS) via the California Law Enforcement Telecommunications System (CLETS) by the law enforcement or state agency. Those agencies without access to AFS shall arrange with the sheriff of the county in which the agency is located to input this information via this system.

(3) The preceding provisions of this article do not apply to the loan of a firearm made by an authorized law enforcement representative of a city, county, or city and county, or the state or federal government to a peace officer employed by that agency and authorized to carry a firearm for the carrying and use of that firearm by that peace officer in the course and scope of his or her duties.

(4) The preceding provisions of this article do not apply to the delivery, sale, or transfer of a firearm by a law enforcement agency to a peace officer pursuant to Section 10334 of the Public Contract Code. Within 10 days of the date that a pistol, revolver, or other firearm capable of being concealed upon the person is sold, delivered, or transferred pursuant to Section 10334 of the Public Contract Code to that peace officer, the name of the officer and the make, model, serial number, and other identifying characteristics of the firearm being sold, transferred, or delivered shall be entered into the Automated Firearms System (AFS) via the California Law Enforcement Telecommunications System (CLETS) by the law enforcement or state agency that sold, transferred, or delivered the firearm. Those agencies without access to AFS shall arrange with the sheriff of the county in which the agency is located to input this information via this system.

(5) The preceding provisions of this article do not apply to the delivery, sale, or transfer of a firearm by a law enforcement agency to a retiring peace officer who is authorized to carry a firearm pursuant to Section 12027.1. Within 10 days of the date that a pistol, revolver, or other firearm capable of being concealed upon the person is sold, delivered, or transferred to that retiring peace officer, the name of the officer and the make, model, serial number, and other identifying characteristics of the firearm being sold, transferred, or delivered shall be entered into the Automated Firearms System (AFS) via the California Law Enforcement Telecommunications System (CLETS) by the law enforcement or state agency that sold, transferred, or delivered the firearm. Those agencies without access to AFS shall arrange with the sheriff of the county in which the agency is located to input this information via this system.

(6) Subdivision (d) of Section 12072 does not apply to sales, deliveries, or transfers of firearms to authorized representatives of cities, cities and counties, counties, or state or federal governments for those governmental agencies where the entity is acquiring the weapon as part of an authorized, voluntary program where the entity is buying or receiving weapons from private individuals. Any weapons acquired pursuant to this subdivision shall be disposed of pursuant to the applicable provisions of Section 12028 or 12032.

(b) Section 12071 and subdivisions (c) and (d) of Section 12072 shall not apply to deliveries, sales, or transfers of firearms between or to importers and manufacturers of firearms licensed to engage in that business pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(c) (1) Subdivision (d) of Section 12072 shall not apply to the infrequent transfer of a firearm that is not a pistol, revolver, or other firearm capable of being concealed upon the person by gift, bequest,

intestate succession, or other means by one individual to another if both individuals are members of the same immediate family.

(2) Subdivision (d) of Section 12072 shall not apply to the infrequent transfer of a pistol, revolver, or other firearm capable of being concealed upon the person by gift, bequest, intestate succession, or other means by one individual to another if both individuals are members of the same immediate family and both of the following conditions are met:

(A) The person to whom the firearm is transferred shall, within 30 days of taking possession of the firearm, forward by prepaid mail or deliver in person to the Department of Justice, a report that includes information concerning the individual taking possession of the firearm, how title was obtained and from whom, and a description of the firearm in question. The report forms that individuals complete pursuant to this paragraph shall be provided to them by the Department of Justice.

(B) Prior to taking possession of the firearm, the person taking title to the firearm shall obtain a basic firearm safety certificate.

(3) As used in this subdivision, "immediate family member" means any one of the following relationships:

(A) Parent and child.

(B) Grandparent and grandchild.

(d) Subdivision (d) of Section 12072 shall not apply to the infrequent loan of firearms between persons who are personally known to each other for any lawful purpose, if the loan does not exceed 30 days in duration.

(e) Section 12071 and subdivisions (c) and (d) of Section 12072 shall not apply to the delivery of a firearm to a gunsmith for service or repair.

(f) Subdivision (d) of Section 12072 shall not apply to the sale, delivery, or transfer of firearms by persons who reside in this state to persons who reside outside this state who are licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto, if the sale, delivery, or transfer is in accordance with Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(g) (1) Subdivision (d) of Section 12072 shall not apply to the infrequent sale or transfer of a firearm, other than a pistol, revolver, or other firearm capable of being concealed upon the person, at auctions or similar events conducted by nonprofit mutual or public benefit corporations organized pursuant to the Corporations Code.

As used in this paragraph, the term "infrequent" shall not be construed to prohibit different local chapters of the same nonprofit corporation from conducting auctions or similar events, provided the individual local chapter conducts the auctions or similar events infrequently. It is the intent of the Legislature that different local chapters, representing different localities, be entitled to invoke the

exemption created by this paragraph, notwithstanding the frequency with which other chapters of the same nonprofit corporation may conduct auctions or similar events.

(2) Subdivision (d) of Section 12072 shall not apply to the transfer of a firearm other than a pistol, revolver, or other firearm capable of being concealed upon the person, if the firearm is donated for an auction or similar event described in paragraph (1) and the firearm is delivered to the nonprofit corporation immediately preceding, or contemporaneous with, the auction or similar event.

(3) The waiting period described in Sections 12071 and 12072 shall not apply to a dealer who delivers a firearm other than a pistol, revolver, or other firearm capable of being concealed upon the person, at an auction or similar event described in paragraph (1), as authorized by subparagraph (C) of paragraph (1) of subdivision (b) of Section 12071. Within two business days of completion of the application to purchase, the dealer shall forward by prepaid mail to the Department of Justice a report of the same as is indicated in subdivision (c) of Section 12077. If the electronic or telephonic transfer of applicant information is used, within two business days of completion of the application to purchase, the dealer delivering the firearm shall transmit to the Department of Justice an electronic or telephonic report of the same as is indicated in subdivision (c) of Section 12077.

(h) Subdivision (d) of Section 12072 shall not apply to the loan of a firearm for the purposes of shooting at targets if the loan occurs on the premises of a target facility that holds a business or regulatory license or on the premises of any club or organization organized for the purposes of practicing shooting at targets upon established ranges, whether public or private, if the firearm is at all times kept within the premises of the target range or on the premises of the club or organization.

(i) (1) Subdivision (d) of Section 12072 shall not apply to a person who takes title or possession of a firearm that is not a pistol, revolver, or other firearm capable of being concealed upon the person by operation of law if the person is not prohibited by Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code from possessing firearms.

(2) Subdivision (d) of Section 12072 shall not apply to a person who takes title or possession of a pistol, revolver, or other firearm capable of being concealed upon the person by operation of law if the person is not prohibited by Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code from possessing firearms and all of the following conditions are met:

(A) If the person taking title or possession is neither a levying officer as defined in Section 481.140, 511.060, or 680.210 of the Code of Civil Procedure nor a person who is receiving that firearm pursuant to subparagraph (G), (I), or (J) of paragraph (2) of subdivision (u), the person shall, within 30 days of taking possession,

forward by prepaid mail or deliver in person to the Department of Justice, a report of information concerning the individual taking possession of the firearm, how title or possession was obtained and from whom, and a description of the firearm in question. The reports that individuals complete pursuant to this paragraph shall be provided to them by the department.

(B) If the person taking title or possession is receiving the firearm pursuant to subparagraph (G) of paragraph (2) of subdivision (u), the person shall do both of the following:

(i) Within 30 days of taking possession, forward by prepaid mail or deliver in person to the department, a report of information concerning the individual taking possession of the firearm, how title or possession was obtained and from whom, and a description of the firearm in question. The reports that individuals complete pursuant to this paragraph shall be provided to them by the department.

(ii) Prior to taking possession of the firearm, the person shall either obtain a basic firearms safety certificate or be exempt from obtaining a basic firearms safety certificate pursuant to Section 12081.

(C) Where the person receiving title or possession of the pistol, revolver, or other firearm capable of being concealed upon the person is a person described in subparagraph (I) of paragraph (2) of subdivision (u), on the date that the person is delivered the firearm, the name and other information concerning the person taking possession of the firearm, how title or possession of the firearm was obtained and from whom, and a description of the firearm by make, model, serial number, and other identifying characteristics, shall be entered into the Automated Firearms System (AFS) via the California Law Enforcement Telecommunications System (CLETS) by the law enforcement or state agency that transferred or delivered the firearm. Those agencies without access to AFS shall arrange with the sheriff of the county in which the agency is located to input this information via this system.

(D) Where the person receiving title or possession of the pistol, revolver, or other firearm capable of being concealed upon the person is a person described in subparagraph (J) of paragraph (2) of subdivision (u), on the date that the person is delivered the firearm, the name and other information concerning the person taking possession of the firearm, how title or possession of the firearm was obtained and from whom, and a description of the firearm by make, model, serial number, and other identifying characteristics, shall be entered into the AFS via the CLETS by the law enforcement or state agency that transferred or delivered the firearm. Those agencies without access to AFS shall arrange with the sheriff of the county in which the agency is located to input this information via this system. In addition, that law enforcement agency shall not deliver that pistol, revolver, or other firearm capable of being concealed upon the person to the person referred to in this subparagraph unless prior to the delivery of the same the person presents proof to the agency that

he or she is the holder of a basic firearms safety certificate or is exempt from obtaining a basic firearms safety certificate pursuant to Section 12081.

(3) Subdivision (d) of Section 12072 shall not apply to a person who takes possession of a firearm by operation of law in a representative capacity who subsequently transfers ownership of the firearm to himself or herself in his or her individual capacity. In the case of a pistol, revolver, or other firearm capable of being concealed upon the person, on and after April 1, 1994, that individual shall have a basic firearms safety certificate in order for the exemption set forth in this paragraph to apply.

(j) Subdivision (d) of Section 12072 shall not apply to deliveries, transfers, or returns of firearms made pursuant to Section 12028, 12028.5, or 12030.

(k) Section 12071 and subdivision (c) of Section 12072 shall not apply to any of the following:

(1) The delivery, sale, or transfer of unloaded firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person by a dealer to another dealer upon proof that the person receiving the firearm is licensed pursuant to Section 12071.

(2) The delivery, sale, or transfer of unloaded firearms by dealers to persons who reside outside this state who are licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(3) The delivery, sale, or transfer of unloaded firearms to a wholesaler if the firearms are being returned to the wholesaler and are intended as merchandise in the wholesaler's business.

(4) The delivery, sale, or transfer of unloaded firearms by one dealer to another dealer if the firearms are intended as merchandise in the receiving dealer's business upon proof that the person receiving the firearm is licensed pursuant to Section 12071.

(5) The delivery, sale, or transfer of an unloaded firearm that is not a pistol, revolver, or other firearm capable of being concealed upon the person by a dealer to himself or herself.

(6) The loan of an unloaded firearm by a dealer who also operates a target facility that holds a business or regulatory license on the premises of the building designated in the license or whose building designated in the license is on the premises of any club or organization organized for the purposes of practicing shooting at targets upon established ranges, whether public or private, to a person at that target facility or that club or organization, if the firearm is at all times kept within the premises of the target range or on the premises of the club or organization.

(*l*) A person who is exempt from subdivision (d) of Section 12072 or is otherwise not required by law to report his or her acquisition, ownership, or disposal of a pistol, revolver, or other firearm capable of being concealed upon the person or who moves out of this state with his or her pistol, revolver, or other firearm capable of being

concealed upon the person may submit a report of the same to the Department of Justice in a format prescribed by the department.

(m) Subdivision (d) of Section 12072 shall not apply to the delivery, sale, or transfer of unloaded firearms to a wholesaler as merchandise in the wholesaler's business by manufacturers or importers licensed to engage in that business pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto, or by another wholesaler, if the delivery, sale, or transfer is made in accordance with Chapter 44 (commencing with Section 921) of Title 18 of the United States Code.

(n) (1) The waiting period described in Section 12071 or 12072 shall not apply to the delivery, sale, or transfer of a pistol, revolver, or other firearm capable of being concealed upon the person by a dealer in either of the following situations:

(A) The dealer is delivering the firearm to another dealer and it is not intended as merchandise in the receiving dealer's business.

(B) The dealer is delivering the firearm to himself or herself and it is not intended as merchandise in his or her business.

(2) In order for this subdivision to apply, both of the following shall occur:

(A) If the dealer is receiving the firearm from another dealer, the dealer receiving the firearm shall present proof to the dealer delivering the firearm that he or she is licensed pursuant to Section 12071.

(B) Whether the dealer is delivering, selling, or transferring the firearm to himself or herself or to another dealer, on the date that the application to purchase is completed, the dealer delivering the firearm shall forward by prepaid mail to the Department of Justice a report of the type of information concerning the purchaser or transferee as is indicated in subdivision (b) of Section 12077. Where the electronic or telephonic transfer of applicant information is used, on the date that the application to purchase is completed, the dealer delivering the firearm shall transmit an electronic or telephonic report of the same and the type of information concerning the purchaser or transferee as is indicated in subdivision (b) of Section 12077.

(o) Section 12071 and subdivisions (c) and (d) of Section 12072 shall not apply to the delivery, sale, or transfer of firearms regulated pursuant to Section 12020, Chapter 2 (commencing with Section 12200), or Chapter 2.3 (commencing with Section 12275), if the delivery, sale, or transfer is conducted in accordance with the applicable provisions of Section 12020, Chapter 2 (commencing with Section 12200), or Chapter 2.3 (commencing with Section 12275).

(p) (1) Paragraph (3) of subdivision (a) and subdivision (d) of Section 12072 shall not apply to the loan of a firearm that is not a pistol, revolver, or other firearm capable of being concealed upon the person to a minor, with the express permission of the parent or legal

guardian of the minor, if the loan does not exceed 30 days in duration and is for a lawful purpose.

(2) Paragraph (3) of subdivision (a) and subdivision (d) of Section 12072 shall not apply to the loan of a pistol, revolver, or other firearm capable of being concealed upon the person to a minor by a person who is not the parent or legal guardian of the minor if all of the following circumstances exist:

(A) The minor has the written consent of his or her parent or legal guardian that is presented at the time of, or prior to the time of, the loan, or is accompanied by his or her parent or legal guardian at the time the loan is made.

(B) The minor is being loaned the firearm for the purpose of engaging in a lawful, recreational sport, including, but not limited to, competitive shooting, or agricultural, ranching, or hunting activity, or a motion picture, television, or video production, or entertainment or theatrical event, the nature of which involves the use of a firearm.

(C) The duration of the loan does not exceed the amount of time that is reasonably necessary to engage in the lawful, recreational sport, including, but not limited to, competitive shooting, or agricultural, ranching, or hunting activity, or a motion picture, television, or video production, or entertainment or theatrical event, the nature of which involves the use of a firearm.

(D) The duration of the loan does not, in any event, exceed 10 days.

(3) Paragraph (3) of subdivision (a) and subdivision (d) of Section 12072 shall not apply to the loan of a pistol, revolver, or other firearm capable of being concealed upon the person to a minor by his or her parent or legal guardian if both of the following circumstances exist:

(A) The minor is being loaned the firearm for the purposes of engaging in a lawful, recreational sport, including, but not limited to, competitive shooting, or agricultural, ranching, or hunting activity, or a motion picture, television, or video production, or entertainment or theatrical event, the nature of which involves the use of a firearm.

(B) The duration of the loan does not exceed the amount of time that is reasonably necessary to engage in the lawful, recreational sport, including, but not limited to, competitive shooting, or agricultural, ranching, or hunting activity, or a motion picture, television, or video production, or entertainment or theatrical event, the nature of which involves the use of a firearm.

(4) Paragraph (3) of subdivision (a) of Section 12072 shall not apply to the transfer or loan of a firearm that is not a pistol, revolver, or other firearm capable of being concealed upon the person to a minor by his or her parent or legal guardian.

(5) Paragraph (3) of subdivision (a) of Section 12072 shall not apply to the transfer or loan of a firearm that is not a pistol, revolver, or other firearm capable of being concealed upon the person to a minor by his or her grandparent who is not the legal guardian of the

minor if the transfer is done with the express permission of the parent or legal guardian of the minor.

(q) Subdivision (d) of Section 12072 shall not apply to the loan of a firearm that is not a pistol, revolver, or other firearm capable of being concealed upon the person to a licensed hunter for use by that licensed hunter for a period of time not to exceed the duration of the hunting season for which that firearm is to be used.

(r) The waiting period described in Section 12071, 12072, or 12084 shall not apply to the delivery, sale, or transfer of a firearm to the holder of a special weapons permit issued by the Department of Justice issued pursuant to Section 12095, 12230, 12250, or 12305. On the date that the application to purchase is completed, the dealer delivering the firearm or the law enforcement agency processing the transaction pursuant to Section 12084, shall forward by prepaid mail to the Department of Justice a report of the same as described in subdivision (b) or (c) of Section 12077 or Section 12084. If the electronic or telephonic transfer of applicant information is used, on the date that the application to purchase is completed, the dealer delivering the firearm shall transmit to the Department of Justice an electronic or telephonic report of the same as is indicated in subdivision (b) or (c) of Section 12077.

(s) Subdivision (d) of Section 12072 shall not apply to the loan of an unloaded firearm or the loan of a firearm loaded with blank cartridges for use solely as a prop for a motion picture, television, or video production or an entertainment or theatrical event.

(t) The waiting period described in Sections 12071, 12072, and 12084 shall not apply to the sale, delivery, loan, or transfer of a pistol, revolver, or other firearm capable of being concealed upon the person, which is a curio or relic, as defined in Section 178.11 of Title 27 of the Code of Federal Regulations, by a dealer or through a law enforcement agency to a person who is licensed as a collector pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto who has a current certificate of eligibility issued to him or her by the Department of Justice pursuant to Section 12071. On the date that the delivery, sale, or transfer is made, the dealer delivering the firearm or the law enforcement agency processing the transaction pursuant to Section 12084, shall forward by prepaid mail to the Department of Justice a report of the transaction pursuant to subdivision (b) of Section 12077 or Section 12084. If the electronic or telephonic transfer of applicant information is used, on the date that the application to purchase is completed, the dealer delivering the firearm shall transmit to the Department of Justice an electronic or telephonic report of the transaction as is indicated in subdivision (b) of Section 12077.

(u) As used in this section:

(1) "Infrequent" has the same meaning as in paragraph (1) of subdivision (c) of Section 12070.

(2) "A person taking title or possession of firearms by operation of law" includes, but is not limited to, any of the following instances wherein an individual receives title to, or possession of, firearms:

(A) The executor or administrator of an estate if the estate includes firearms.

(B) A secured creditor or an agent or employee thereof when the firearms are possessed as collateral for, or as a result of, a default under a security agreement under the Commercial Code.

(C) A levying officer, as defined in Section 481.140, 511.060, or 680.260 of the Code of Civil Procedure.

(D) A receiver performing his or her functions as a receiver if the receivership estate includes firearms.

(E) A trustee in bankruptcy performing his or her duties if the bankruptcy estate includes firearms.

(F) An assignee for the benefit of creditors performing his or her functions as an assignee, if the assignment includes firearms.

(G) A transmutation of property consisting of firearms pursuant to Section 850 of the Family Code.

(H) Firearms passing to a surviving spouse pursuant to Chapter 1 (commencing with Section 13500) of Part 2 of Division 8 of the Probate Code.

(I) Firearms received by the family of a police officer or deputy sheriff from a local agency pursuant to Section 50081 of the Government Code.

(J) The transfer of a firearm by a law enforcement agency to the person who found the firearm where the delivery is to the person as the finder of the firearm pursuant to Article 1 (commencing with Section 2080) of Chapter 4 of Division 3 of the Civil Code.

SEC. 4.5. Section 12078 of the Penal Code is amended to read:

12078. (a) (1) The waiting periods described in Sections 12071, 12072, and 12084 shall not apply to deliveries, transfers, or sales of firearms made to persons properly identified as full-time paid peace officers as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, provided that the peace officers are authorized by their employer to carry firearms while in the performance of their duties. Proper identification is defined as verifiable written certification from the head of the agency by which the purchaser or transferee is employed, identifying the purchaser or transferee as a peace officer who is authorized to carry firearms while in the performance of his or her duties, and authorizing the purchase or transfer. The certification shall be delivered to the dealer or local law enforcement agency acting pursuant to Section 12084 at the time of purchase or transfer and the purchaser or transferee shall identify himself or herself as the person authorized in the certification. The dealer or local law enforcement agency shall keep the certification with the record of sale, or LEFT, as the case may be. On the date that the delivery, sale, or transfer is made, the dealer delivering the firearm or the law enforcement agency processing the transaction

pursuant to Section 12084 shall forward by prepaid mail to the Department of Justice a report of the transaction pursuant to subdivision (b) or (c) of Section 12077 or Section 12084. If electronic or telephonic transfer of applicant information is used, on the date that the application to purchase is completed, the dealer delivering the firearm shall transmit to the Department of Justice an electronic or telephonic report of the transaction as is indicated in subdivision (b) or (c) of Section 12077.

(2) The preceding provisions of this article do not apply to deliveries, transfers, or sales of firearms made to authorized law enforcement representatives of cities, counties, cities and counties, or state or federal governments for exclusive use by those governmental agencies if, prior to the delivery, transfer, or sale of these firearms, written authorization from the head of the agency authorizing the transaction is presented to the person from whom the purchase, delivery, or transfer is being made. Proper written authorization is defined as verifiable written certification from the head of the agency by which the purchaser or transferee is employed, identifying the employee as an individual authorized to conduct the transaction, and authorizing the transaction for the exclusive use of the agency by which he or she is employed. Within 10 days of the date a pistol, revolver, or other firearm capable of being concealed upon the person is acquired by the agency, a record of the same shall be entered as an institutional weapon into the Automated Firearms System (AFS) via the California Law Enforcement Telecommunications System (CLETS) by the law enforcement or state agency. Those agencies without access to AFS shall arrange with the sheriff of the county in which the agency is located to input this information via this system.

(3) The preceding provisions of this article do not apply to the loan of a firearm made by an authorized law enforcement representative of a city, county, or city and county, or the state or federal government to a peace officer employed by that agency and authorized to carry a firearm for the carrying and use of that firearm by that peace officer in the course and scope of his or her duties.

(4) The preceding provisions of this article do not apply to the delivery, sale, or transfer of a firearm by a law enforcement agency to a peace officer pursuant to Section 10334 of the Public Contract Code. Within 10 days of the date that a pistol, revolver, or other firearm capable of being concealed upon the person is sold, delivered, or transferred pursuant to Section 10334 of the Public Contract Code to that peace officer, the name of the officer and the make, model, serial number, and other identifying characteristics of the firearm being sold, transferred, or delivered shall be entered into the Automated Firearms System (AFS) via the California Law Enforcement Telecommunications System (CLETS) by the law enforcement or state agency that sold, transferred, or delivered the firearm. Those agencies without access to AFS shall arrange with the

sheriff of the county in which the agency is located to input this information via this system.

(5) The preceding provisions of this article do not apply to the delivery, sale, or transfer of a firearm by a law enforcement agency to a retiring peace officer who is authorized to carry a firearm pursuant to Section 12027.1. Within 10 days of the date that a pistol, revolver, or other firearm capable of being concealed upon the person is sold, delivered, or transferred to that retiring peace officer, the name of the officer and the make, model, serial number, and other identifying characteristics of the firearm being sold, transferred, or delivered shall be entered into the Automated Firearms System (AFS) via the California Law Enforcement Telecommunications System (CLETS) by the law enforcement or state agency that sold, transferred, or delivered the firearm. Those agencies without access to AFS shall arrange with the sheriff of the county in which the agency is located to input this information via this system.

(6) Subdivision (d) of Section 12072 does not apply to sales, deliveries, or transfers of firearms to authorized representatives of cities, cities and counties, counties, or state or federal governments for those governmental agencies where the entity is acquiring the weapon as part of an authorized, voluntary program where the entity is buying or receiving weapons from private individuals. Any weapons acquired pursuant to this subdivision shall be disposed of pursuant to the applicable provisions of Section 12028 or 12032.

(b) Section 12071 and subdivisions (c) and (d) of Section 12072 shall not apply to deliveries, sales, or transfers of firearms between or to importers and manufacturers of firearms licensed to engage in that business pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(c) (1) Subdivision (d) of Section 12072 shall not apply to the infrequent transfer of a firearm that is not a pistol, revolver, or other firearm capable of being concealed upon the person by gift, bequest, intestate succession, or other means by one individual to another if both individuals are members of the same immediate family.

(2) Subdivision (d) of Section 12072 shall not apply to the infrequent transfer of a pistol, revolver, or other firearm capable of being concealed upon the person by gift, bequest, intestate succession, or other means by one individual to another if both individuals are members of the same immediate family and both of the following conditions are met:

(A) The person to whom the firearm is transferred shall, within 30 days of taking possession of the firearm, forward by prepaid mail or deliver in person to the Department of Justice, a report that includes information concerning the individual taking possession of the firearm, how title was obtained and from whom, and a description of the firearm in question. The report forms that individuals complete

pursuant to this paragraph shall be provided to them by the Department of Justice.

(B) Prior to taking possession of the firearm, the person taking title to the firearm shall obtain a basic firearm safety certificate.

(3) As used in this subdivision, "immediate family member" means any one of the following relationships:

(A) Parent and child.

(B) Grandparent and grandchild.

(d) Subdivision (d) of Section 12072 shall not apply to the infrequent loan of firearms between persons who are personally known to each other for any lawful purpose, if the loan does not exceed 30 days in duration.

(e) Section 12071 and subdivisions (c) and (d) of Section 12072 shall not apply to the delivery of a firearm to a gunsmith for service or repair.

(f) Subdivision (d) of Section 12072 shall not apply to the sale, delivery, or transfer of firearms by persons who reside in this state to persons who reside outside this state who are licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto, if the sale, delivery, or transfer is in accordance with Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(g) (1) Subdivision (d) of Section 12072 shall not apply to the infrequent sale or transfer of a firearm, other than a pistol, revolver, or other firearm capable of being concealed upon the person, at auctions or similar events conducted by nonprofit mutual or public benefit corporations organized pursuant to the Corporations Code.

As used in this paragraph, the term "infrequent" shall not be construed to prohibit different local chapters of the same nonprofit corporation from conducting auctions or similar events, provided the individual local chapter conducts the auctions or similar events infrequently. It is the intent of the Legislature that different local chapters, representing different localities, be entitled to invoke the exemption created by this paragraph, notwithstanding the frequency with which other chapters of the same nonprofit corporation may conduct auctions or similar events.

(2) Subdivision (d) of Section 12072 shall not apply to the transfer of a firearm other than a pistol, revolver, or other firearm capable of being concealed upon the person, if the firearm is donated for an auction or similar event described in paragraph (1) and the firearm is delivered to the nonprofit corporation immediately preceding, or contemporaneous with, the auction or similar event.

(3) The waiting period described in Sections 12071 and 12072 shall not apply to a dealer who delivers a firearm other than a pistol, revolver, or other firearm capable of being concealed upon the person, at an auction or similar event described in paragraph (1), as authorized by subparagraph (C) of paragraph (1) of subdivision (b)

of Section 12071. Within two business days of completion of the application to purchase, the dealer shall forward by prepaid mail to the Department of Justice a report of the same as is indicated in subdivision (c) of Section 12077. If the electronic or telephonic transfer of applicant information is used, within two business days of completion of the application to purchase, the dealer delivering the firearm shall transmit to the Department of Justice an electronic or telephonic report of the same as is indicated in subdivision (c) of Section 12077.

(h) Subdivision (d) of Section 12072 shall not apply to the loan of a firearm for the purposes of shooting at targets if the loan occurs on the premises of a target facility that holds a business or regulatory license or on the premises of any club or organization organized for the purposes of practicing shooting at targets upon established ranges, whether public or private, if the firearm is at all times kept within the premises of the target range or on the premises of the club or organization.

(i) (1) Subdivision (d) of Section 12072 shall not apply to a person who takes title or possession of a firearm that is not a pistol, revolver, or other firearm capable of being concealed upon the person by operation of law if the person is not prohibited by Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code from possessing firearms.

(2) Subdivision (d) of Section 12072 shall not apply to a person who takes title or possession of a pistol, revolver, or other firearm capable of being concealed upon the person by operation of law if the person is not prohibited by Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code from possessing firearms and all of the following conditions are met:

(A) If the person taking title or possession is neither a levying officer as defined in Section 481.140, 511.060, or 680.210 of the Code of Civil Procedure, nor a person who is receiving that firearm pursuant to subparagraph (G), (I), or (J) of paragraph (2) of subdivision (u), the person shall, within 30 days of taking possession, forward by prepaid mail or deliver in person to the Department of Justice, a report of information concerning the individual taking possession of the firearm, how title or possession was obtained and from whom, and a description of the firearm in question. The reports that individuals complete pursuant to this paragraph shall be provided to them by the department.

(B) If the person taking title or possession is receiving the firearm pursuant to subparagraph (G) of paragraph (2) of subdivision (u), the person shall do both of the following:

(i) Within 30 days of taking possession, forward by prepaid mail or deliver in person to the department, a report of information concerning the individual taking possession of the firearm, how title or possession was obtained and from whom, and a description of the

firearm in question. The reports that individuals complete pursuant to this paragraph shall be provided to them by the department.

(ii) Prior to taking possession of the firearm, the person shall either obtain a basic firearms safety certificate or be exempt from obtaining a basic firearms safety certificate pursuant to Section 12081.

(C) Where the person receiving title or possession of the pistol, revolver, or other firearm capable of being concealed upon the person is a person described in subparagraph (I) of paragraph (2) of subdivision (u), on the date that the person is delivered the firearm, the name and other information concerning the person taking possession of the firearm, how title or possession of the firearm was obtained and from whom, and a description of the firearm by make, model, serial number, and other identifying characteristics, shall be entered into the Automated Firearms System (AFS) via the California Law Enforcement Telecommunications System (CLETS) by the law enforcement or state agency that transferred or delivered the firearm. Those agencies without access to AFS shall arrange with the sheriff of the county in which the agency is located to input this information via this system.

(D) Where the person receiving title or possession of the pistol, revolver, or other firearm capable of being concealed upon the person is a person described in subparagraph (J) of paragraph (2) of subdivision (u), on the date that the person is delivered the firearm, the name and other information concerning the person taking possession of the firearm, how title or possession of the firearm was obtained and from whom, and a description of the firearm by make, model, serial number, and other identifying characteristics, shall be entered into the AFS via the CLETS by the law enforcement or state agency that transferred or delivered the firearm. Those agencies without access to AFS shall arrange with the sheriff of the county in which the agency is located to input this information via this system. In addition, that law enforcement agency shall not deliver that pistol, revolver, or other firearm capable of being concealed upon the person to the person referred to in this subparagraph unless prior to the delivery of the same the person presents proof to the agency that he or she is the holder of a basic firearms safety certificate or is exempt from obtaining a basic firearms safety certificate pursuant to Section 12081.

(3) Subdivision (d) of Section 12072 shall not apply to a person who takes possession of a firearm by operation of law in a representative capacity who subsequently transfers ownership of the firearm to himself or herself in his or her individual capacity. In the case of a pistol, revolver, or other firearm capable of being concealed upon the person, on and after April 1, 1994, that individual shall have a basic firearms safety certificate in order for the exemption set forth in this paragraph to apply.

(j) Subdivision (d) of Section 12072 shall not apply to deliveries, transfers, or returns of firearms made pursuant to Section 12028, 12028.5, or 12030.

(k) Section 12071 and subdivision (c) of Section 12072 shall not apply to any of the following:

(1) The delivery, sale, or transfer of unloaded firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person by a dealer to another dealer upon proof that the person receiving the firearm is licensed pursuant to Section 12071.

(2) The delivery, sale, or transfer of unloaded firearms by dealers to persons who reside outside this state who are licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(3) The delivery, sale, or transfer of unloaded firearms to a wholesaler if the firearms are being returned to the wholesaler and are intended as merchandise in the wholesaler's business.

(4) The delivery, sale, or transfer of unloaded firearms by one dealer to another dealer if the firearms are intended as merchandise in the receiving dealer's business upon proof that the person receiving the firearm is licensed pursuant to Section 12071.

(5) The delivery, sale, or transfer of an unloaded firearm that is not a pistol, revolver, or other firearm capable of being concealed upon the person by a dealer to himself or herself.

(6) The loan of an unloaded firearm by a dealer who also operates a target facility that holds a business or regulatory license on the premises of the building designated in the license or whose building designated in the license is on the premises of any club or organization organized for the purposes of practicing shooting at targets upon established ranges, whether public or private, to a person at that target facility or that club or organization, if the firearm is at all times kept within the premises of the target range or on the premises of the club or organization.

(*l*) A person who is exempt from subdivision (d) of Section 12072 or is otherwise not required by law to report his or her acquisition, ownership, or disposal of a pistol, revolver, or other firearm capable of being concealed upon the person or who moves out of this state with his or her pistol, revolver, or other firearm capable of being concealed upon the person may submit a report of the same to the Department of Justice in a format prescribed by the department.

(m) Subdivision (d) of Section 12072 shall not apply to the delivery, sale, or transfer of unloaded firearms to a wholesaler as merchandise in the wholesaler's business by manufacturers or importers licensed to engage in that business pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto, or by another wholesaler, if the delivery, sale, or transfer is made in accordance with Chapter 44 (commencing with Section 921) of Title 18 of the United States Code.

(n) (1) The waiting period described in Section 12071 or 12072 shall not apply to the delivery, sale, or transfer of a pistol, revolver, or other firearm capable of being concealed upon the person by a dealer in either of the following situations:

(A) The dealer is delivering the firearm to another dealer and it is not intended as merchandise in the receiving dealer's business.

(B) The dealer is delivering the firearm to himself or herself and it is not intended as merchandise in his or her business.

(2) In order for this subdivision to apply, both of the following shall occur:

(A) If the dealer is receiving the firearm from another dealer, the dealer receiving the firearm shall present proof to the dealer delivering the firearm that he or she is licensed pursuant to Section 12071.

(B) Whether the dealer is delivering, selling, or transferring the firearm to himself or herself or to another dealer, on the date that the application to purchase is completed, the dealer delivering the firearm shall forward by prepaid mail to the Department of Justice a report of the same and the type of information concerning the purchaser or transferee as is indicated in subdivision (b) of Section 12077. Where the electronic or telephonic transfer of applicant information is used, on the date that the application to purchase is completed, the dealer delivering the firearm shall transmit an electronic or telephonic report of the same and the type of information concerning the purchaser or transferee as is indicated in subdivision (b) of Section 12077.

(o) Section 12071 and subdivisions (c) and (d) of Section 12072 shall not apply to the delivery, sale, or transfer of firearms regulated pursuant to Section 12020, Chapter 2 (commencing with Section 12200), or Chapter 2.3 (commencing with Section 12275), if the delivery, sale, or transfer is conducted in accordance with the applicable provisions of Section 12020, Chapter 2 (commencing with Section 12200), or Chapter 2.3 (commencing with Section 12275).

(p) (1) Paragraph (3) of subdivision (a) and subdivision (d) of Section 12072 shall not apply to the loan of a firearm that is not a pistol, revolver, or other firearm capable of being concealed upon the person to a minor, with the express permission of the parent or legal guardian of the minor, if the loan does not exceed 30 days in duration and is for a lawful purpose.

(2) Paragraph (3) of subdivision (a) and subdivision (d) of Section 12072 shall not apply to the loan of a pistol, revolver, or other firearm capable of being concealed upon the person to a minor by a person who is not the parent or legal guardian of the minor if all of the following circumstances exist:

(A) The minor has the written consent of his or her parent or legal guardian that is presented at the time of, or prior to the time of, the loan, or is accompanied by his or her parent or legal guardian at the time the loan is made.

(B) The minor is being loaned the firearm for the purpose of engaging in a lawful, recreational sport, including, but not limited to, competitive shooting, or agricultural, ranching, or hunting activity, or a motion picture, television, or video production, or entertainment or theatrical event, the nature of which involves the use of a firearm.

(C) The duration of the loan does not exceed the amount of time that is reasonably necessary to engage in the lawful, recreational sport, including, but not limited to, competitive shooting, or agricultural, ranching, or hunting activity, or a motion picture, television, or video production, or entertainment or theatrical event, the nature of which involves the use of a firearm.

(D) The duration of the loan does not, in any event, exceed 10 days.

(3) Paragraph (3) of subdivision (a) and subdivision (d) of Section 12072 shall not apply to the loan of a pistol, revolver, or other firearm capable of being concealed upon the person to a minor by his or her parent or legal guardian if both of the following circumstances exist:

(A) The minor is being loaned the firearm for the purposes of engaging in a lawful, recreational sport, including, but not limited to, competitive shooting, or agricultural, ranching, or hunting activity, or a motion picture, television, or video production, or entertainment or theatrical event, the nature of which involves the use of a firearm.

(B) The duration of the loan does not exceed the amount of time that is reasonably necessary to engage in the lawful, recreational sport, including, but not limited to, competitive shooting, or agricultural, ranching, or hunting activity, or a motion picture, television, or video production, or entertainment or theatrical event, the nature of which involves the use of a firearm.

(4) Paragraph (3) of subdivision (a) of Section 12072 shall not apply to the transfer or loan of a firearm that is not a pistol, revolver, or other firearm capable of being concealed upon the person to a minor by his or her parent or legal guardian.

(5) Paragraph (3) of subdivision (a) of Section 12072 shall not apply to the transfer or loan of a firearm that is not a pistol, revolver, or other firearm capable of being concealed upon the person to a minor by his or her grandparent who is not the legal guardian of the minor if the transfer is done with the express permission of the parent or legal guardian of the minor.

(q) Subdivision (d) of Section 12072 shall not apply to the loan of a firearm that is not a pistol, revolver, or other firearm capable of being concealed upon the person to a licensed hunter for use by that licensed hunter for a period of time not to exceed the duration of the hunting season for which that firearm is to be used.

(r) The waiting period described in Section 12071, 12072, or 12084 shall not apply to the delivery, sale, or transfer of a firearm to the holder of a special weapons permit issued by the Department of Justice issued pursuant to Section 12095, 12230, 12250, or 12305. On the date that the application to purchase is completed, the dealer

delivering the firearm or the law enforcement agency processing the transaction pursuant to Section 12084, shall forward by prepaid mail to the Department of Justice a report of the same as described in subdivision (b) or (c) of Section 12077 or Section 12084. If the electronic or telephonic transfer of applicant information is used, on the date that the application to purchase is completed, the dealer delivering the firearm shall transmit to the Department of Justice an electronic or telephonic report of the same as is indicated in subdivision (b) or (c) of Section 12077.

(s) Subdivision (d) of Section 12072 shall not apply to the loan of an unloaded firearm or the loan of a firearm loaded with blank cartridges for use solely as a prop for a motion picture, television, or video production or an entertainment or theatrical event.

(t) (1) The waiting period described in Sections 12071, 12072, and 12084 shall not apply to the sale, delivery, loan, or transfer of a firearm that is a curio or relic, as defined in Section 178.11 of Title 27 of the Code of Federal Regulations, by a dealer or through a law enforcement agency to a person who is licensed as a collector pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto who has a current certificate of eligibility issued to him or her by the Department of Justice pursuant to Section 12071. On the date that the delivery, sale, or transfer is made, the dealer delivering the firearm or the law enforcement agency processing the transaction pursuant to Section 12084, shall forward by prepaid mail to the Department of Justice a report of the transaction pursuant to subdivision (b) of Section 12077 or Section 12084. If the electronic or telephonic transfer of applicant information is used, on the date that the application to purchase is completed, the dealer delivering the firearm shall transmit to the Department of Justice an electronic or telephonic report of the transaction as is indicated in subdivision (b) or (c) of Section 12077.

(2) Subdivision (d) of Section 12072 shall not apply to the infrequent sale, loan, or transfer of a firearm that is not a pistol, revolver, or other firearm capable of being concealed upon the person, which is a curio or relic manufactured at least 50 years prior to the current date, but not including replicas thereof, as defined in Section 178.11 of Title 27 of the Code of Federal Regulations.

(u) As used in this section:

(1) "Infrequent" has the same meaning as in paragraph (1) of subdivision (c) of Section 12070.

(2) "A person taking title or possession of firearms by operation of law" includes, but is not limited to, any of the following instances wherein an individual receives title to, or possession of, firearms:

(A) The executor or administrator of an estate if the estate includes firearms.

(B) A secured creditor or an agent or employee thereof when the firearms are possessed as collateral for, or as a result of, a default under a security agreement under the Commercial Code.

(C) A levying officer, as defined in Section 481.140, 511.060, or 680.260 of the Code of Civil Procedure.

(D) A receiver performing his or her functions as a receiver if the receivership estate includes firearms.

(E) A trustee in bankruptcy performing his or her duties if the bankruptcy estate includes firearms.

(F) An assignee for the benefit of creditors performing his or her functions as an assignee, if the assignment includes firearms.

(G) A transmutation of property consisting of firearms pursuant to Section 850 of the Family Code.

(H) Firearms passing to a surviving spouse pursuant to Chapter 1 (commencing with Section 13500) of Part 2 of Division 8 of the Probate Code.

(I) Firearms received by the family of a police officer or deputy sheriff from a local agency pursuant to Section 50081 of the Government Code.

(J) The transfer of a firearm by a law enforcement agency to the person who found the firearm where the delivery is to the person as the finder of the firearm pursuant to Article 1 (commencing with Section 2080) of Chapter 4 of Division 3 of the Civil Code.

SEC. 5. If any phrase, clause, sentence, section, or provision of this act or application thereof to any person or circumstance is held invalid, such invalidity shall not affect any other phrase, clause, sentence, section, provision or application of this act, which can be given effect without the invalid phrase, clause, sentence, section, provision or application and to this end the provisions of this act are declared to be severable.

SEC. 6. Section 2.5 of this bill incorporates amendments to Section 12071 of the Penal Code proposed by both this bill and AB 1871. 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 12071 of the Penal Code, and (3) this bill is enacted after AB 1871, in which case Section 2 of this bill shall not become operative.

SEC. 7. Section 1.5 of this bill incorporates amendments to Section 12070 of the Penal Code proposed by both this bill and AB 2011. 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 12070 of the Penal Code, and (3) this bill is enacted after AB 2011, in which case Section 12070 of the Penal Code, as amended by AB 2011, shall remain operative only until the operative date of this bill, at which time Section 1.5 of this bill shall become operative, and Section 1 of this bill shall not become operative.

SEC. 8. Section 3.5 of this bill incorporates amendments to Section 12072 of the Penal Code proposed by both this bill and AB 2011. 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 12072 of the Penal Code, and (3) this bill is enacted after AB 2011, in which case Section 12072 of the Penal Code, as amended by AB 2011, shall remain operative only until the operative date of this bill, at which time Section 3.5 of this bill shall become operative, and Section 3 of this bill shall not become operative.

SEC. 9. Section 4.5 of this bill incorporates amendments to Section 12078 of the Penal Code proposed by both this bill and AB 2011. 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 12078 of the Penal Code, and (3) this bill is enacted after AB 2011, in which case Section 12078 of the Penal Code, as amended by AB 2011, shall remain operative only until the operative date of this bill, at which time Section 4.5 of this bill shall become operative, and Section 4 of this bill shall not become operative.

SEC. 10. 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 909

An act to add Section 12281 to the Penal Code, relating to firearms, and making an appropriation therefor.

[Approved by Governor September 27, 1998. Filed with Secretary of State September 28, 1998.]

On this date I have signed Assembly Bill No. 48 with a deletion.

This bill would grant immunity from criminal prosecution to anyone who is subject to prosecution under the state's assault weapons law for conduct related to an SKS rifle, as defined, committed during a specified period in which there were conflicting administrative designations of that weapon. This bill would make the immunity provisions fully retroactive to anyone who is subject to prosecution or prosecuted and convicted of violating the assault weapons law.

I have deleted the $1.3 million appropriation. The expenditure of these funds appears premature in light of the pending review of the entire assault weapons law now before the California Supreme Court.

PETE WILSON, Governor

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

SECTION 1. Section 12281 is added to the Penal Code, to read:

12281. (a) Any person who, or firm, company, or corporation that, operated a retail or other commercial firm, company, or corporation, and manufactured, distributed, transported, imported, possessed, possessed for sale, offered for sale, or transferred, for commercial purpose, an SKS rifle in California between January 1, 1992, and December 19, 1997, shall be immune from criminal prosecution under Section 12280. The immunity provided in this subdivision shall apply retroactively to any person who, or firm, company, or corporation that, is or was charged by complaint or indictment with a violation of Section 12280 for conduct related to an SKS rifle, whether or not the case of that person, firm, company, or corporation is final.

(b) Any person who possessed, gave, loaned, or transferred an SKS rifle in California between January 1, 1992, and December 19, 1997, shall be immune from criminal prosecution under Section 12280. The immunity provided in this subdivision shall apply retroactively to any person who was charged by complaint or indictment with a violation of Section 12280 for conduct related to an SKS rifle, whether or not the case of that person is final.

(c) Any SKS rifle in the possession of any person who, or firm, company, or corporation that, is described in subdivision (a) or (b), shall not be subject to seizure by law enforcement for violation of Section 12280 prior to January 1, 2000.

(d) Any person, firm, company, or corporation, convicted under Section 12280 for conduct relating to an SKS rifle, shall be permitted to withdraw his or her plea of guilty or nolo contendere, or to reopen his or her case and assert the immunities provided in this section, if the court determines that the allowance of the immunity is in the interests of justice. The court shall interpret this section liberally to the benefit of the defendant.

(e) The Department of Justice shall notify all district attorneys on or before January 31, 1999, of the provisions of this section. The department shall identify all criminal prosecutions in the state for conduct related to SKS rifles within 90 days of the effective date of this section. In all cases so identified by the Attorney General, the district attorneys shall inform defense counsel, or the defendant if the defendant is in propria persona, in writing, of the provisions of this section within 120 days of the effective date of this section.

(f) (1) Any person, firm, company, or corporation that is in possession of an SKS rifle shall do one of the following on or before January 1, 2000:

(A) Relinquish the SKS rifle to the Department of Justice pursuant to subdivision (h).

(B) Relinquish the SKS rifle to a law enforcement agency pursuant to Section 12288.

(C) Dispose of the SKS rifle as permitted by Section 12285.

(2) Any person who has obtained title to an SKS rifle by bequest or intestate succession shall be required to comply with subparagraph (A) or (B) of paragraph (1) of this subdivision unless he or she otherwise complies with paragraph (1) of subdivision (b) of Section 12285.

(3) Any SKS rifle relinquished to the department pursuant to this subdivision shall be in a manner prescribed by the department.

(4) The department shall conduct a public education and notification program as described in Section 12289, commencing no later than January 1, 1999.

(g) Any person who complies with subdivision (f) shall be exempt from the prohibitions set forth in subdivision (a) or (b) of Section 12280 for those acts by that person associated with complying with the requirements of subdivision (f).

(h) (1) The department shall purchase any SKS rifle relinquished pursuant to subdivision (f) from funds appropriated for this purpose by the act amending this section in the 1997–98 Regular Session of the Legislature or by subsequent budget acts or other legislation. The department shall adopt regulations for this purchase program that include, but are not limited to, the manner of delivery, the reimbursement to be paid, and the manner in which persons shall be informed of the state purchase program.

(2) Any person who relinquished possession of an SKS rifle to a law enforcement agency pursuant to Section 12288 prior to the effective date of the purchase program set forth in paragraph (1) shall be eligible to be reimbursed from the purchase program. The procedures for reimbursement pursuant to this paragraph shall be part of the regulations adopted by the department pursuant to paragraph (1).

(i) Notwithstanding paragraph (11) of subdivision (a) of Section 12276, an "SKS rifle" under this section means all SKS rifles commonly referred to as "SKS Sporter" versions, manufactured to accept a detachable AK-47 magazine and imported into this state and sold by a licensed gun dealer, or otherwise lawfully possessed in this state by a resident of this state who is not a licensed gun dealer, between January 1, 1992, and December 19, 1997.

(j) Failure to comply with subdivision (f) is a public offense punishable by imprisonment in the state prison, or in a county jail, not exceeding one year.

(k) In addition to the regulations required pursuant to subdivision (h), emergency regulations for the purchase program described in subdivision (h) shall be adopted pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 2. The sum of one million three hundred thousand dollars ($1,300,000) is hereby appropriated from the General Fund for expenditure during the 1998–99, 1999–2000, and 2000–01 fiscal years,

to the Department of Justice for the purpose of purchasing firearms pursuant to subdivision (h) of Section 12281 of the Penal Code.

SEC. 3. It is the intent of the Legislature to provide sufficient funding to the Department of Justice for the purpose of purchasing firearms pursuant to subdivision (h) of Section 12281 of the Penal Code. If the appropriation in Section 2 of this act proves insufficient, the Legislature intends that sufficient additional funds be appropriated to the Department of Justice for this purpose in the Budget Act of 1999.

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 910

An act to amend Sections 12050, 12051, 12053, and 12054 of, and to add Sections 12050.2 and 12052.5 to, the Penal Code, relating to firearms.

[Approved by Governor September 27, 1998. Filed with Secretary of State September 28, 1998.]

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

SECTION 1. Section 12050 of the Penal Code is amended to read:

12050. (a) (1) (A) The sheriff of a county, upon proof that the person applying is of good moral character, that good cause exists for the issuance, and that the person applying satisfies any one of the conditions specified in subparagraph (D) and has completed a course of training as described in subparagraph (E), may issue to that person a license to carry a pistol, revolver, or other firearm capable of being concealed upon the person in either one of the following formats:

(i) A license to carry concealed a pistol, revolver, or other firearm capable of being concealed upon the person.

(ii) Where the population of the county is less than 200,000 persons according to the most recent federal decennial census, a license to carry loaded and exposed in that county a pistol, revolver, or other firearm capable of being concealed upon the person.

(B) The chief or other head of a municipal police department of any city or city and county, upon proof that the person applying is of good moral character, that good cause exists for the issuance, and that the person applying is a resident of that city and has completed a course of training as described in subparagraph (E), may issue to that person a license to carry a pistol, revolver, or other firearm capable of being concealed upon the person in either one of the following formats:

(i) A license to carry concealed a pistol, revolver, or other firearm capable of being concealed upon the person.

(ii) Where the population of the county in which the city is located is less than 200,000 persons according to the most recent federal decennial census, a license to carry loaded and exposed in that county a pistol, revolver, or other firearm capable of being concealed upon the person.

(C) The sheriff of a county or the chief or other head of a municipal police department of any city or city and county, upon proof that the person applying is of good moral character, that good cause exists for the issuance, and that the person applying is a person who has been deputized or appointed as a peace officer pursuant to subdivision (a) or (b) of Section 830.6 by that sheriff or that chief of police or other head of a municipal police department, may issue to that person a license to carry concealed a pistol, revolver, or other firearm capable of being concealed upon the person. Direct or indirect fees for the issuance of a license pursuant to this subparagraph may be waived. The fact that an applicant for a license to carry a pistol, revolver, or other firearm capable of being concealed upon the person has been deputized or appointed as a peace officer pursuant to subdivision (a) or (b) of Section 830.6 shall be considered only for the purpose of issuing a license pursuant to this subparagraph, and shall not be considered for the purpose of issuing a license pursuant to subparagraph (A) or (B).

(D) For the purpose of subparagraph (A), the applicant shall satisfy any one of the following:

(i) Is a resident of the county or a city within the county.

(ii) Spends a substantial period of time in the applicant's principal place of employment or business in the county or a city within the county.

(E) (i) For new license applicants, the course of training may be any course acceptable to the licensing authority, shall not exceed 16 hours, and shall include instruction on at least firearm safety and the law regarding the permissible use of a firearm. Notwithstanding this clause, the licensing authority may require a community college course certified by the Commission on Peace Officer Standards and Training, up to a maximum of 24 hours, but only if required uniformly of all license applicants without exception.

(ii) For license renewal applicants, the course of training may be any course acceptable to the licensing authority, shall be no less than

four hours, and shall include instruction on at least firearm safety and the law regarding the permissible use of a firearm.

(2) (A) (i) Except as otherwise provided in clause (ii), subparagraph (C) of this paragraph, and subparagraph (B) of paragraph (4) of subdivision (f), a license issued pursuant to subparagraph (A) or (B) of paragraph (1) is valid for any period of time not to exceed two years from the date of the license.

(ii) If the licensee's place of employment or business was the basis for issuance of the license pursuant to subparagraph (A) of paragraph (1), the license is valid for any period of time not to exceed 90 days from the date of the license. The license shall be valid only in the county in which the license was originally issued. The licensee shall give a copy of this license to the licensing authority of the city, county, or city and county in which he or she resides. The licensing authority that originally issued the license shall inform the licensee verbally and in writing in at least 16-point type of this obligation to give a copy of the license to the licensing authority of the city, county, or city and county of residence. Any application to renew or extend the validity of, or reissue, the license may be granted only upon the concurrence of the licensing authority that originally issued the license and the licensing authority of the city, county, or city and county in which the licensee resides.

(B) A license issued pursuant to subparagraph (C) of paragraph (1) to a peace officer appointed pursuant to Section 830.6 is valid for any period of time not to exceed four years from the date of the license, except that the license shall be invalid upon the conclusion of the person's appointment pursuant to Section 830.6 if the four-year period has not otherwise expired or any other condition imposed pursuant to this section does not limit the validity of the license to a shorter time period.

(C) A license issued pursuant to subparagraph (A) or (B) of paragraph (1) is valid for any period of time not to exceed three years from the date of the license if the license is issued to any of the following individuals:

(i) A judge of a California court of record.

(ii) A full-time court commissioner of a California court of record.

(iii) A judge of a federal court.

(iv) A magistrate of a federal court.

(3) For purposes of this subdivision, a city or county may be considered an applicant's "principal place of employment or business" only if the applicant is physically present in the jurisdiction during a substantial part of his or her working hours for purposes of that employment or business.

(b) A license may include any reasonable restrictions or conditions which the issuing authority deems warranted, including restrictions as to the time, place, manner, and circumstances under which the person may carry a pistol, revolver, or other firearm capable of being concealed upon the person.

(c) Any restrictions imposed pursuant to subdivision (b) shall be indicated on any license issued.

(d) A license shall not be issued if the Department of Justice determines that the person is within a prohibited class described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(e) (1) The license shall be revoked by the local licensing authority if at any time either the local licensing authority is notified by the Department of Justice that a licensee is within a prohibited class described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code, or the local licensing authority determines that the person is within a prohibited class described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(2) If at any time the Department of Justice determines that a licensee is within a prohibited class described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code, the department shall immediately notify the local licensing authority of the determination.

(3) If the local licensing authority revokes the license, the Department of Justice shall be notified of the revocation pursuant to Section 12053. The licensee shall also be immediately notified of the revocation in writing.

(f) (1) A person issued a license pursuant to this section may apply to the licensing authority for an amendment to the license to do one or more of the following:

(A) Add or delete authority to carry a particular pistol, revolver, or other firearm capable of being concealed upon the person.

(B) Authorize the licensee to carry concealed a pistol, revolver, or other firearm capable of being concealed upon the person.

(C) If the population of the county is less than 200,000 persons according to the most recent federal decennial census, authorize the licensee to carry loaded and exposed in that county a pistol, revolver, or other firearm capable of being concealed upon the person.

(D) Change any restrictions or conditions on the license, including restrictions as to the time, place, manner, and circumstances under which the person may carry a pistol, revolver, or other firearm capable of being concealed upon the person.

(2) When the licensee changes his or her address, the license shall be amended to reflect the new address and a new license shall be issued pursuant to paragraph (3).

(3) If the licensing authority amends the license, a new license shall be issued to the licensee reflecting the amendments.

(4) (A) The licensee shall notify the licensing authority in writing within 10 days of any change in the licensee's place of residence.

(B) If the license is one to carry concealed a pistol, revolver, or other firearm capable of being concealed upon the person, then it may not be revoked solely because the licensee changes his or her

place of residence to another county if the licensee has not breached any conditions or restrictions set forth in the license or has not fallen into a prohibited class described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code. However, any license issued pursuant to subparagraph (A) or (B) of paragraph (1) of subdivision (a) shall expire 90 days after the licensee moves from the county of issuance if the licensee's place of residence was the basis for issuance of the license.

(C) If the license is one to carry loaded and exposed a pistol, revolver, or other firearm capable of being concealed upon the person, the license shall be revoked immediately if the licensee changes his or her place of residence to another county.

(5) An amendment to the license does not extend the original expiration date of the license and the license shall be subject to renewal at the same time as if the license had not been amended.

(6) An application to amend a license does not constitute an application for renewal of the license.

(g) Nothing in this article shall preclude the chief or other head of a municipal police department of any city from entering an agreement with the sheriff of the county in which the city is located for the sheriff to process all applications for licenses, renewals of licenses, and amendments to licenses, pursuant to this article.

SEC. 2. Section 12050.2 is added to the Penal Code, to read:

12050.2. Within three months of the effective date of the act adding this section, each licensing authority shall publish and make available a written policy summarizing the provisions of subparagraphs (A) and (B) of paragraph (1) of subdivision (a) of Section 12050.

SEC. 3. Section 12051 of the Penal Code is amended to read:

12051. (a) (1) Applications for licenses shall be filed in writing, signed by the applicant, and shall state the name, occupation, residence and business address of the applicant, his or her age, height, weight, color of eyes and hair, and reason for desiring a license to carry the weapon. Any license issued upon the application shall set forth the foregoing data and shall, in addition, contain a description of the weapon or weapons authorized to be carried, giving the name of the manufacturer, the serial number, and the caliber. The license issued to the licensee may be laminated.

(2) Applications for amendments to licenses shall be filed in writing and signed by the applicant, and shall state what type of amendment is sought pursuant to subdivision (f) of Section 12050 and the reason for desiring the amendment.

(3) (A) Applications for amendments to licenses, applications for licenses, amendments to licenses, and licenses shall be uniform throughout the state, upon forms to be prescribed by the Attorney General. The Attorney General shall convene a committee composed of one representative of the California State Sheriffs' Association, one representative of the California Police Chiefs'

Association, and one representative of the Department of Justice to develop a standard application form for licenses. The application shall include a section summarizing the statutory provisions of state law that result in the automatic denial of a license. The Attorney General shall adopt and implement this standard application form for licenses on or before July 1, 1999.

(B) The forms shall contain a provision whereby the applicant attests to the truth of statements contained in the application.

(C) An applicant shall not be required to complete any additional application or form for a license, or to provide any information other than that necessary to complete the standard application form described in subparagraph (A), except to clarify or interpret information provided by the applicant on the standard application form.

(D) The Attorney General may adopt and enforce regulations that are necessary, appropriate, or useful to interpret and implement this paragraph pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. Pending the adoption of those regulations, the Attorney General may adopt emergency regulations that shall become effective immediately. The adoption of the emergency regulations shall be subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and the emergency regulations shall only be effective until June 30, 1999, or on the effective date of the regulations adopted by the Attorney General to implement this paragraph, whichever occurs first, at which time the emergency regulations shall be deemed to be repealed.

(b) Any person who files an application required by subdivision (a) knowing that statements contained therein are false is guilty of a misdemeanor.

(c) Any person who knowingly makes a false statement on the application regarding any of the following shall be guilty of a felony:

(1) The denial or revocation of a license, or the denial of an amendment to a license, issued pursuant to Section 12050.

(2) A criminal conviction.

(3) A finding of not guilty by reason of insanity.

(4) The use of a controlled substance.

(5) A dishonorable discharge from military service.

(6) A commitment to a mental institution.

(7) A renunciation of United States citizenship.

SEC. 4. Section 12052.5 is added to the Penal Code, to read:

12052.5. The licensing authority shall give written notice to the applicant indicating if the license is approved or denied within 90 days of the initial application for a new license or a license renewal or 30 days after receipt of the applicant's criminal background check from the Department of Justice, whichever is later.

SEC. 5. Section 12053 of the Penal Code is amended to read:

12053. (a) A record of the following shall be maintained in the office of the licensing authority:

(1) The denial of a license.

(2) The denial of an amendment to a license.

(3) The issuance of a license.

(4) The amendment of a license.

(5) The revocation of a license.

(b) Copies of each of the following shall be filed immediately by the issuing officer or authority with the Department of Justice:

(1) The denial of a license.

(2) The denial of an amendment to a license.

(3) The issuance of a license.

(4) The amendment of a license.

(5) The revocation of a license.

(c) Commencing on or before January 1, 2000, and annually thereafter, each licensing authority shall submit to the Attorney General the total number of licenses issued to peace officers, pursuant to subparagraph (C) of paragraph (1) of subdivision (a) of Section 12050, and to judges, pursuant to subparagraph (A) or (B) of paragraph (1) of subdivision (a) of Section 12050. The Attorney General shall collect and record the information submitted pursuant to this subdivision by county and licensing authority.

SEC. 6. Section 12054 of the Penal Code is amended to read:

12054. (a) Each applicant for a new license or for the renewal of a license shall pay at the time of filing his or her application a fee determined by the Department of Justice not to exceed the application processing costs of the Department of Justice for the direct costs of furnishing the report required by Section 12052. After the department establishes fees sufficient to reimburse the department for processing costs, fees charged shall increase at a rate not to exceed the legislatively approved annual cost-of-living adjustments for the department's budget. The officer receiving the application and the fee shall transmit the fee, with the fingerprints if required, to the Department of Justice. The licensing authority of any city, city and county, or county may charge an additional fee in an amount equal to the actual costs for processing the application for a new license, excluding fingerprint and training costs, but in no case to exceed one hundred dollars ($100), and shall transmit the additional fee, if any, to the city, city and county, or county treasury. The first 20 percent of this additional local fee may be collected upon filing of the initial application. The balance of the fee shall be collected only upon issuance of the license.

The licensing authority may charge an additional fee, not to exceed twenty-five dollars ($25), for processing the application for a license renewal, and shall transmit an additional fee, if any, to the city, city and county, or county treasury. These local fees may be increased at a rate not to exceed any increase in the California Consumer Price

Index as compiled and reported by the California Department of Industrial Relations.

(b) In the case of an amended license pursuant to subdivision (f) of Section 12050, the licensing authority of any city, city and county, or county may charge a fee, not to exceed ten dollars ($10), except that the fee may be increased at a rate not to exceed any increase in the California Consumer Price Index as compiled and reported by the California Department of Industrial Relations, for processing the amended license and shall transmit the fee to the city, city and county, or county treasury.

(c) If psychological testing on the initial application is required by the licensing authority, the license applicant shall be referred to a licensed psychologist used by the licensing authority for the psychological testing of its own employees. The applicant may be charged for the actual cost of the testing in an amount not to exceed one hundred fifty dollars ($150). Additional psychological testing of an applicant seeking license renewal shall be required only if there is compelling evidence to indicate that a test is necessary. The cost to the applicant for this additional testing shall not exceed one hundred fifty dollars ($150).

(d) Except as authorized pursuant to subdivisions (a), (b), and (c), no requirement, charge, assessment, fee, or condition that requires the payment of any additional funds by the applicant may be imposed by any licensing authority as a condition of the application for a license.

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 911

An act to amend Sections 12001, 12026.2, 12070, 12072, 12077, and 12078 of, and to add Sections 11108.3, 11108.7, and 11108.9 to, the Penal Code, relating to firearms, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 27, 1998. Filed with Secretary of State September 28, 1998.]

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

SECTION 1. Section 11108.3 is added to the Penal Code, to read:

11108.3. (a) In addition to the requirements of Section 11108 that apply to a local law enforcement agency's duty to report to the Department of Justice the recovery of a firearm, whenever a police or sheriff's department recovers a firearm that is illegally possessed, has been used in a crime, or is suspected of having been used in a crime, it shall report to the department in a manner determined by the Attorney General in consultation with the Bureau of Alcohol, Tobacco, and Firearms all available information necessary to identify and trace the history of that firearm.

(b) When the department receives information from a local law enforcement agency pursuant to subdivision (a), it shall promptly forward this information to the National Tracing Center of the federal Bureau of Alcohol, Tobacco, and Firearms to the extent practicable.

(c) The Department of Justice shall implement an electronic system by January 1, 2002, to receive comprehensive tracing information from each local law enforcement agency, and to forward this information to the National Tracing Center.

(d) In implementing this section, the Attorney General shall ensure to the maximum extent practical that both of the following apply:

(1) The information he or she provides to the federal Bureau of Alcohol, Tobacco, and Firearms enables that agency to trace the ownership of the firearm described in subdivision (a).

(2) Local law enforcement agencies can report all relevant information without being unduly burdened by this reporting function.

(e) Information collected pursuant to this section shall be maintained by the department for a period of not less than 10 years, and shall be available, under guidelines set forth by the Attorney General, for academic and policy research purposes.

(f) The Attorney General shall have the authority to issue regulations to further the purposes of this section.

SEC. 2. Section 11108.7 is added to the Penal Code, to read:

11108.7. On January 1, 2002, the Department of Justice shall submit to the Legislature a report that shall include, but not be limited to:

(a) An assessment of the effectiveness of current arrangements for ensuring that recovered firearms are traced by the National Tracing Center of the Bureau of Alcohol, Tobacco, and Firearms.

(b) The number of firearms submitted by each local law enforcement agency.

(c) An evaluation of the effectiveness and the likelihood of success of each Serial Number Restoration Plan described in Section 11108.9.

(d) Suggestions for further legislation or programmatic changes necessary to further the purpose of Sections 11108.3 and 11108.9.

The Attorney General shall contract with an independent agency to conduct the report.

SEC. 3. Section 11108.9 is added to the Penal Code, to read:

11108.9. Each local law enforcement agency shall develop, in conjunction with and subject to the approval of the Department of Justice, a succinct Serial Number Restoration Plan setting forth the goals for reduction in the number of recovered firearms that cannot be traced due to obliterated serial numbers, and the methods that the local agency will follow in order to achieve these goals, including, but not limited to, establishing local programs for restoring serial numbers and accessing resources of the Department of Justice or the Bureau of Alcohol, Tobacco, and Firearms for restoring serial numbers. These plans shall be submitted to the Department of Justice by January 1, 2000.

SEC. 4. Section 12001 of the Penal Code is amended to read:

12001. (a) As used in this title, the terms "pistol," "revolver," and "firearm capable of being concealed upon the person" shall apply to and include any device designed to be used as a weapon, from which is expelled a projectile by the force of any explosion, or other form of combustion, and which has a barrel less than 16 inches in length. These terms also include any device which has a barrel 16 inches or more in length which is designed to be interchanged with a barrel less than 16 inches in length.

(b) As used in this title, "firearm" means any device, designed to be used as a weapon, from which is expelled through a barrel a projectile by the force of any explosion or other form of combustion.

(c) As used in Sections 12021, 12021.1, 12070, 12071, 12072, 12073, 12078, and 12101 of this code, and Sections 8100, 8101, and 8103 of the Welfare and Institutions Code, the term "firearm" includes the frame or receiver of the weapon.

(d) For the purposes of Sections 12025 and 12031, the term "firearm" also shall include any rocket, rocket propelled projectile launcher, or similar device containing any explosive or incendiary material whether or not the device is designed for emergency or distress signaling purposes.

(e) For purposes of Sections 12070, 12071, and paragraph (7) of subdivision (a), and subdivisions (b), (c), (d), and (f) of Section 12072, the term "firearm" does not include an unloaded firearm which is defined as an "antique firearm" in Section 921(a)(16) of Title 18 of the United States Code.

(f) Nothing shall prevent a device defined as a "pistol," "revolver," or "firearm capable of being concealed upon the person" from also being found to be a short-barreled shotgun or a short-barreled rifle, as defined in Section 12020.

(g) For purposes of Sections 12551 and 12552, the term "BB device" means any instrument which expels a metallic projectile,

such as a BB or a pellet, through the force of air pressure, CO_2 pressure, or spring action, or any spot marker gun.

(h) As used in this title, "wholesaler" means any person who is licensed as a dealer pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto who sells, transfers, or assigns firearms, or parts of firearms, to persons who are licensed as manufacturers, importers, or gunsmiths pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code, or persons licensed pursuant to Section 12071, and includes persons who receive finished parts of firearms and assemble them into completed or partially completed firearms in furtherance of that purpose.

"Wholesaler" shall not include a manufacturer, importer, or gunsmith who is licensed to engage in those activities pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code or a person licensed pursuant to Section 12071 and the regulations issued pursuant thereto. A wholesaler also does not include those persons dealing exclusively in grips, stocks, and other parts of firearms that are not frames or receivers thereof.

(i) As used in Section 12071, 12072, or 12084, "application to purchase" means any of the following:

(1) The initial completion of the register by the purchaser, transferee, or person being loaned the firearm as required by subdivision (b) of Section 12076.

(2) The initial completion of the LEFT by the purchaser, transferee, or person being loaned the firearm as required by subdivision (d) of Section 12084.

(3) The initial completion and transmission to the department of the record of electronic or telephonic transfer by the dealer on the purchaser, transferee, or person being loaned the firearm as required by subdivision (c) of Section 12076.

(j) For purposes of Section 12023, a firearm shall be deemed to be "loaded" whenever both the firearm and the unexpended ammunition capable of being discharged from the firearm are in the immediate possession of the same person.

(k) For purposes of Sections 12021, 12021.1, 12025, 12070, 12072, 12073, 12078, and 12101 of this code, and Sections 8100, 8101, and 8103 of the Welfare and Institutions Code, notwithstanding the fact that the term "any firearm" may be used in those sections, each firearm or the frame or receiver of the same shall constitute a distinct and separate offense under those sections.

(*l*) For purposes of Section 12020, a violation of that section as to each firearm, weapon, or device enumerated therein shall constitute a distinct and separate offense.

(m) Each application that requires any firearms eligibility determination involving the issuance of any license, permit, or certificate pursuant to this title shall include two copies of the applicant's fingerprints on forms prescribed by the Department of

Justice. One copy of the fingerprints may be submitted to the United States Federal Bureau of Investigation.

(n) As used in this chapter, a "personal handgun importer" means an individual who meets all of the following criteria:

(1) He or she is not a person licensed pursuant to Section 12071.

(2) He or she is not a licensed manufacturer of firearms pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code.

(3) He or she is not a licensed importer of firearms pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(4) He or she is the owner of a pistol, revolver, or other firearm capable of being concealed upon the person.

(5) He or she acquired that pistol, revolver, or other firearm capable of being concealed upon the person outside of California.

(6) He or she moves into this state on or after January 1, 1998, as a resident of this state.

(7) He or she intends to possess that pistol, revolver, or other firearm capable of being concealed upon the person within this state on or after January 1, 1998.

(8) The pistol, revolver, or other firearm capable of being concealed upon the person was not delivered to him or her by a person licensed pursuant to Section 12071 who delivered that firearm following the procedures set forth in Section 12071 and subdivision (c) of Section 12072.

(9) He or she, while a resident of this state, had not previously reported his or her ownership of that pistol, revolver, or other firearm capable of being concealed upon the person to the Department of Justice in a manner prescribed by the department that included information concerning him or her and a description of the firearm.

(10) The pistol, revolver, or other firearm capable of being concealed upon the person is not a firearm that is prohibited by subdivision (a) of Section 12020.

(11) The pistol, revolver, or other firearm capable of being concealed upon the person is not an assault weapon, as defined in Section 12276.

(12) The pistol, revolver, or other firearm capable of being concealed upon the person is not a machinegun, as defined in Section 12200.

(13) The person is 18 years of age or older.

(o) For purposes of paragraph (6) of subdivision (n):

(1) Except as provided in paragraph (2), residency shall be determined in the same manner as is the case for establishing residency pursuant to Section 12505 of the Vehicle Code.

(2) In the case of members of the armed forces of the United States, residency shall be deemed to be established when he or she was discharged from active service in this state.

SEC. 5. Section 12026.2 of the Penal Code is amended to read:

12026.2. (a) Section 12025 does not apply to, or affect, any of the following:

(1) The possession of a firearm by an authorized participant in a motion picture, television, or video production or entertainment event when the participant lawfully uses the firearm as part of that production or event or while going directly to, or coming directly from, that production or event.

(2) The possession of a firearm in a locked container by a member of any club or organization, organized for the purpose of lawfully collecting and lawfully displaying pistols, revolvers, or other firearms, while the member is at meetings of the clubs or organizations or while going directly to, and coming directly from, those meetings.

(3) The transportation of a firearm by a participant when going directly to, or coming directly from, a recognized safety or hunter safety class, or a recognized sporting event involving that firearm.

(4) The transportation of a firearm by a person listed in Section 12026 directly between any of the places mentioned in Section 12026.

(5) The transportation of a firearm by a person when going directly to, or coming directly from, a fixed place of business or private residential property for the purpose of the lawful repair or the lawful transfer, sale, or loan of that firearm.

(6) The transportation of a firearm by a person listed in Section 12026 when going directly from the place where that person lawfully received that firearm to that person's place of residence or place of business or to private property owned or lawfully possessed by that person.

(7) The transportation of a firearm by a person when going directly to, or coming directly from, a gun show, swap meet, or similar event to which the public is invited, for the purpose of displaying that firearm in a lawful manner.

(8) The transportation of a firearm by an authorized employee or agent of a supplier of firearms when going directly to, or coming directly from, a motion picture, television, or video production or entertainment event for the purpose of providing that firearm to an authorized participant to lawfully use as a part of that production or event.

(9) The transportation of a firearm by a person when going directly to, or coming directly from, a target range, which holds a regulatory or business license, for the purposes of practicing shooting at targets with that firearm at that target range.

(10) The transportation of a firearm by a person when going directly to, or coming directly from, a place designated by a person authorized to issue licenses pursuant to Section 12050 when done at the request of the issuing agency so that the issuing agency can determine whether or not a license should be issued to that person to carry that firearm.

(11) The transportation of a firearm by a person when going directly to, or coming directly from, a law enforcement agency for

the purpose of a lawful transfer, sale, or loan of that firearm pursuant to Section 12084.

(12) The transportation of a firearm by a person when going directly to, or coming directly from, a lawful camping activity for the purpose of having that firearm available for lawful personal protection while at the lawful campsite. This paragraph shall not be construed to override the statutory authority granted to the Department of Parks and Recreation or any other state or local governmental agencies to promulgate rules and regulations governing the administration of parks and campgrounds.

(13) The transportation of a firearm by a person in order to comply with subdivision (c) or (i) of Section 12078 as it pertains to that firearm.

(14) The transportation of a firearm by a person in order to utilize subdivision (*l*) of Section 12078 as it pertains to that firearm.

(15) The transportation of a firearm by a person when going directly to, or coming directly from, a gun show or event, as defined in Section 178.100 of Title 27 of the Code of Federal Regulations, for the purpose of lawfully transferring, selling, or loaning that firearm in accordance with subdivision (d) of Section 12072.

(16) The transportation of a firearm by a person in order to utilize paragraph (3) of subdivision (a) of Section 12078 as it pertains to that firearm.

(17) The transportation of a firearm by a person who finds the firearm in order to comply with Article 1 (commencing with Section 2080) of Chapter 4 of Division 3 of the Civil Code as it pertains to that firearm and if that firearm is being transported to a law enforcement agency, the person gives prior notice to the law enforcement agency that he or she is transporting the firearm to the law enforcement agency.

(18) The transportation of a firearm by a person who finds the firearm and is transporting it to a law enforcement agency for disposition according to law, if he or she gives prior notice to the law enforcement agency that he or she is transporting the firearm to the law enforcement agency for disposition according to law.

(19) The transportation of a firearm by a person in order to comply with paragraph (2) of subdivision (f) of Section 12072 as it pertains to that firearm.

(20) The transportation of a firearm by a person in order to comply with paragraph (3) of subdivision (f) of Section 12072 as it pertains to that firearm.

(21) The transportation of a firearm by a person for the purpose of obtaining an identification number or mark assigned for that firearm from the Department of Justice pursuant to Section 12092.

(b) In order for a firearm to be exempted under subdivision (a), while being transported to or from a place, the firearm shall be unloaded, kept in a locked container, as defined in subdivision (d), and the course of travel shall include only those deviations between

authorized locations as are reasonably necessary under the circumstances.

(c) This section does not prohibit or limit the otherwise lawful carrying or transportation of any pistol, revolver, or other firearm capable of being concealed upon the person in accordance with this chapter.

(d) As used in this section, "locked container" means a secure container which is fully enclosed and locked by a padlock, key lock, combination lock, or similar locking device. The term "locked container" does not include the utility or glove compartment of a motor vehicle.

SEC. 6. Section 12070 of the Penal Code is amended to read:

12070. (a) No person shall sell, lease, or transfer firearms unless he or she has been issued a license pursuant to Section 12071. Any person violating this section is guilty of a misdemeanor.

(b) Subdivision (a) does not include any of the following:

(1) The sale, lease, or transfer of any firearm by a person acting pursuant to operation of law, a court order, or pursuant to the Enforcement of Judgments Law (Title 9 (commencing with Section 680.010) of Part 2 of the Code of Civil Procedure), or by a person who liquidates a personal firearm collection to satisfy a court judgment.

(2) A person acting pursuant to subdivision (e) of Section 186.22a or subdivision (c) of Section 12028.

(3) The sale, lease, or transfer of a firearm by a person who obtains title to the firearm by intestate succession or by bequest or as a surviving spouse pursuant to Chapter 1 (commencing with Section 13500) of Part 2 of Division 8 of the Probate Code, provided the person disposes of the firearm within 60 days of receipt of the firearm.

(4) The infrequent sale, lease, or transfer of firearms.

(5) The sale, lease, or transfer of used firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, at gun shows or events, as specified in subparagraph (B) of paragraph (1) of subdivision (b) of Section 12071, by a person other than a licensee or dealer, provided the person has a valid federal firearms license and a current certificate of eligibility issued by the Department of Justice, as specified in Section 12071, and provided all the sales, leases, or transfers fully comply with subdivision (d) of Section 12072. However, the person shall not engage in the sale, lease, or transfer of used firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person at more than 12 gun shows or events in any calendar year and shall not sell, lease, or transfer more than 15 used firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person at any single gun show or event. In no event shall the person sell more than 75 used firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person in any calendar year.

A person described in this paragraph shall be known as a "Gun Show Trader."

The Department of Justice shall adopt regulations to administer this program and shall recover the full costs of administration from fees assessed applicants.

As used in this paragraph, the term "used firearm" means a firearm that has been sold previously at retail and is more than three years old.

(6) The activities of a law enforcement agency pursuant to Section 12084.

(7) Deliveries, sales, or transfers of firearms between or to importers and manufacturers of firearms licensed to engage in business pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(8) The sale, delivery, or transfer of firearms by manufacturers or importers licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto to dealers or wholesalers.

(9) Deliveries and transfers of firearms made pursuant to Section 12028, 12028.5, or 12030.

(10) The loan of a firearm for the purposes of shooting at targets, if the loan occurs on the premises of a target facility which holds a business or regulatory license or on the premises of any club or organization organized for the purposes of practicing shooting at targets upon established ranges, whether public or private, if the firearm is at all times kept within the premises of the target range or on the premises of the club or organization.

(11) Sales, deliveries, or transfers of firearms by manufacturers, importers, or wholesalers licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto to persons who reside outside this state who are licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto, if the sale, delivery, or transfer is in accordance with Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(12) Sales, deliveries, or transfers of firearms by persons who reside outside this state and are licensed outside this state pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto to wholesalers, manufacturers, or importers, if the sale, delivery, or transfer is in accordance with Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(13) Sales, deliveries, or transfers of firearms by wholesalers to dealers.

(14) Sales, deliveries, or transfers of firearms by persons who reside outside this state to persons licensed pursuant to Section 12071,

if the sale, delivery, or transfer is in accordance with Chapter 44 (commencing with Section 921) of Title 18 of the United States Code, and the regulations issued pursuant thereto.

(15) Sales, deliveries, or transfers of firearms by persons who reside outside this state and are licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto to dealers, if the sale, delivery, or transfer is in accordance with Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(16) The delivery, sale, or transfer of an unloaded firearm by one wholesaler to another wholesaler if that firearm is intended as merchandise in the receiving wholesaler's business.

(17) The loan of an unloaded firearm or the loan of a firearm loaded with blank cartridges for use solely as a prop for a motion picture, television, or video production or entertainment or theatrical event.

(18) The delivery of an unloaded firearm that is a curio or relic, as defined in Section 178.11 of Title 27 of the Code of Federal Regulations, by a person licensed as a collector pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto with a current certificate of eligibility issued pursuant to Section 12071 to a dealer.

(c) (1) As used in this section, "infrequent" means:

(A) For pistols, revolvers, and other firearms capable of being concealed upon the person, less than six transactions per calendar year. For this purpose, "transaction" means a single sale, lease, or transfer of any number of pistols, revolvers, or other firearms capable of being concealed upon the person.

(B) For firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, occasional and without regularity.

(2) As used in this section, "operation of law" includes, but is not limited to, any of the following:

(A) The executor or administrator of an estate, if the estate includes firearms.

(B) A secured creditor or an agent or employee thereof when the firearms are possessed as collateral for, or as a result of, a default under a security agreement under the Commercial Code.

(C) A levying officer, as defined in Section 481.140, 511.060, or 680.260 of the Code of Civil Procedure.

(D) A receiver performing his or her functions as a receiver, if the receivership estate includes firearms.

(E) A trustee in bankruptcy performing his or her duties, if the bankruptcy estate includes firearms.

(F) An assignee for the benefit of creditors performing his or her functions as an assignee, if the assignment includes firearms.

(G) A transmutation of property between spouses pursuant to Section 850 of the Family Code.

(H) Firearms received by the family of a police officer or deputy sheriff from a local agency pursuant to Section 50081 of the Government Code.

SEC. 6.5. Section 12070 of the Penal Code is amended to read:

12070. (a) No person shall sell, lease, or transfer firearms unless he or she has been issued a license pursuant to Section 12071. Any person violating this section is guilty of a misdemeanor.

(b) Subdivision (a) does not include any of the following:

(1) The sale, lease, or transfer of any firearm by a person acting pursuant to operation of law, a court order, or pursuant to the Enforcement of Judgments Law (Title 9 (commencing with Section 680.010) of Part 2 of the Code of Civil Procedure), or by a person who liquidates a personal firearm collection to satisfy a court judgment.

(2) A person acting pursuant to subdivision (e) of Section 186.22a or subdivision (c) of Section 12028.

(3) The sale, lease, or transfer of a firearm by a person who obtains title to the firearm by intestate succession or by bequest or as a surviving spouse pursuant to Chapter 1 (commencing with Section 13500) of Part 2 of Division 8 of the Probate Code, provided the person disposes of the firearm within 60 days of receipt of the firearm.

(4) The infrequent sale, lease, or transfer of firearms.

(5) The sale, lease, or transfer of used firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, at gun shows or events, as specified in subparagraph (B) of paragraph (1) of subdivision (b) of Section 12071, by a person other than a licensee or dealer, provided the person has a valid federal firearms license and a current certificate of eligibility issued by the Department of Justice, as specified in Section 12071, and provided all the sales, leases, or transfers fully comply with subdivision (d) of Section 12072. However, the person shall not engage in the sale, lease, or transfer of used firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person at more than 12 gun shows or events in any calendar year and shall not sell, lease, or transfer more than 15 used firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person at any single gun show or event. In no event shall the person sell more than 75 used firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person in any calendar year.

A person described in this paragraph shall be known as a "Gun Show Trader."

The Department of Justice shall adopt regulations to administer this program and shall recover the full costs of administration from fees assessed applicants.

As used in this paragraph, the term "used firearm" means a firearm that has been sold previously at retail and is more than three years old.

(6) The activities of a law enforcement agency pursuant to Section 12084.

(7) Deliveries, sales, or transfers of firearms between or to importers and manufacturers of firearms licensed to engage in business pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(8) The sale, delivery, or transfer of firearms by manufacturers or importers licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto to dealers or wholesalers.

(9) Deliveries and transfers of firearms made pursuant to Section 12028, 12028.5, or 12030.

(10) The loan of a firearm for the purposes of shooting at targets, if the loan occurs on the premises of a target facility which holds a business or regulatory license or on the premises of any club or organization organized for the purposes of practicing shooting at targets upon established ranges, whether public or private, if the firearm is at all times kept within the premises of the target range or on the premises of the club or organization.

(11) Sales, deliveries, or transfers of firearms by manufacturers, importers, or wholesalers licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto to persons who reside outside this state who are licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto, if the sale, delivery, or transfer is in accordance with Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(12) Sales, deliveries, or transfers of firearms by persons who reside outside this state and are licensed outside this state pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto to wholesalers, manufacturers, or importers, if the sale, delivery, or transfer is in accordance with Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(13) Sales, deliveries, or transfers of firearms by wholesalers to dealers.

(14) Sales, deliveries, or transfers of firearms by persons who reside outside this state to persons licensed pursuant to Section 12071, if the sale, delivery, or transfer is in accordance with Chapter 44 (commencing with Section 921) of Title 18 of the United States Code, and the regulations issued pursuant thereto.

(15) Sales, deliveries, or transfers of firearms by persons who reside outside this state and are licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code

and the regulations issued pursuant thereto to dealers, if the sale, delivery, or transfer is in accordance with Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(16) The delivery, sale, or transfer of an unloaded firearm by one wholesaler to another wholesaler if that firearm is intended as merchandise in the receiving wholesaler's business.

(17) The loan of an unloaded firearm or the loan of a firearm loaded with blank cartridges for use solely as a prop for a motion picture, television, or video production or entertainment or theatrical event.

(18) The delivery of an unloaded firearm that is a curio or relic, as defined in Section 178.11 of Title 27 of the Code of Federal Regulations, by a person licensed as a collector pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto with a current certificate of eligibility issued pursuant to Section 12071 to a dealer.

(c) (1) As used in this section, "infrequent" means:

(A) For pistols, revolvers, and other firearms capable of being concealed upon the person, less than six transactions per calendar year. For this purpose, "transaction" means a single sale, lease, or transfer of any number of pistols, revolvers, or other firearms capable of being concealed upon the person.

(B) For firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, occasional and without regularity.

(2) As used in this section, "operation of law" includes, but is not limited to, any of the following:

(A) The executor or administrator of an estate, if the estate includes firearms.

(B) A secured creditor or an agent or employee thereof when the firearms are possessed as collateral for, or as a result of, a default under a security agreement under the Commercial Code.

(C) A levying officer, as defined in Section 481.140, 511.060, or 680.260 of the Code of Civil Procedure.

(D) A receiver performing his or her functions as a receiver, if the receivership estate includes firearms.

(E) A trustee in bankruptcy performing his or her duties, if the bankruptcy estate includes firearms.

(F) An assignee for the benefit of creditors performing his or her functions as an assignee, if the assignment includes firearms.

(G) A transmutation of property between spouses pursuant to Section 850 of the Family Code.

(H) Firearms received by the family of a police officer or deputy sheriff from a local agency pursuant to Section 50081 of the Government Code.

(I) The transfer of a firearm by a law enforcement agency to the person who found the firearm where the delivery is to the person as

the finder of the firearm pursuant to Article 1 (commencing with Section 2080) of Chapter 4 of Division 3 of the Civil Code.

SEC. 7. Section 12072 of the Penal Code is amended to read:

12072. (a) (1) No person, corporation, or firm shall knowingly supply, deliver, sell, or give possession or control of a firearm to any person within any of the classes prohibited by Section 12021 or 12021.1.

(2) No person, corporation, or dealer shall sell, supply, deliver, or give possession or control of a firearm to any person whom he or she has cause to believe to be within any of the classes prohibited by Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(3) (A) No person, corporation, or firm shall sell, loan, or transfer a firearm to a minor.

(B) Subparagraph (A) shall not apply to or affect those circumstances set forth in subdivision (p) of Section 12078.

(4) No person, corporation, or dealer shall sell, loan, or transfer a firearm to any person whom he or she knows or has cause to believe is not the actual purchaser or transferee of the firearm, or to any person who is not the person actually being loaned the firearm, if the person, corporation, or dealer has either of the following:

(A) Knowledge that the firearm is to be subsequently loaned, sold, or transferred to avoid the provisions of subdivision (c) or (d).

(B) Knowledge that the firearm is to be subsequently loaned, sold, or transferred to avoid the requirements of any exemption to the provisions of subdivision (c) or (d).

(5) No person, corporation, or dealer shall acquire a firearm for the purpose of selling, transferring, or loaning the firearm, if the person, corporation, or dealer has either of the following:

(A) In the case of a dealer, intent to violate subdivision (b) or (c).

(B) In any other case, intent to avoid either of the following:

(i) The provisions of subdivision (d).

(ii) The requirements of any exemption to the provisions of subdivision (d).

(6) The dealer shall comply with the provisions of paragraph (18) of subdivision (b) of Section 12071.

(7) (A) No person shall sell or otherwise transfer his or her ownership of a pistol, revolver, or other firearm capable of being concealed upon the person unless the firearm bears either:

(i) The name of the manufacturer, the manufacturer's make or model, and a manufacturer's serial number assigned to that firearm.

(ii) The identification number or mark assigned to the firearm by the Department of Justice pursuant to Section 12092.

(b) No person licensed under Section 12071 shall supply, sell, deliver, or give possession or control of a pistol, revolver, or firearm capable of being concealed upon the person to any person under the age of 21 years or any other firearm to a person under the age of 18 years.

(c) No dealer, whether or not acting pursuant to Section 12082, shall deliver a firearm to a person, as follows:

(1) Prior to April 1, 1997, within 15 days of the application to purchase a pistol, revolver, or other firearm capable of being concealed upon the person, or, after notice by the department pursuant to subdivision (d) of Section 12076, within 15 days of the submission to the department of any correction to the application, or within 15 days of the submission to the department of any fee required pursuant to subdivision (e) of Section 12076, whichever is later. Prior to April 1, 1997, within 10 days of the application to purchase any firearm that is not a pistol, revolver, or other firearm capable of being concealed upon the person, or, after notice by the department pursuant to subdivision (d) of Section 12076, within 10 days of the submission to the department of any correction to the application, or within 10 days of the submission to the department of any fee required pursuant to subdivision (e) of Section 12076, whichever is later. On or after April 1, 1997, within 10 days of the application to purchase, or, after notice by the department pursuant to subdivision (d) of Section 12076, within 10 days of the submission to the department of any correction to the application, or within 10 days of the submission to the department of any fee required pursuant to subdivision (e) of Section 12076, whichever is later.

(2) Unless unloaded and securely wrapped or unloaded and in a locked container.

(3) Unless the purchaser, transferee, or person being loaned the firearm presents clear evidence of his or her identity and age, as defined in Section 12071, to the dealer.

(4) Whenever the dealer is notified by the Department of Justice that the person is in a prohibited class described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(5) Commencing April 1, 1994, no pistol, revolver, or other firearm capable of being concealed upon the person shall be delivered unless the purchaser, transferee, or person being loaned the firearm presents to the dealer a basic firearms safety certificate.

(d) Where neither party to the transaction holds a dealer's license issued pursuant to Section 12071, the parties to the transaction shall complete the sale, loan, or transfer of that firearm through either of the following:

(1) A licensed dealer pursuant to Section 12082.

(2) A law enforcement agency pursuant to Section 12084.

(e) No person may commit an act of collusion relating to Article 8 (commencing with Section 12800) of Chapter 6. For purposes of this section and Section 12071, collusion may be proven by any one of the following factors:

(1) Answering a test applicant's questions during an objective test relating to basic firearms safety.

(2) Knowingly grading the examination falsely.

(3) Providing an advance copy of the test to an applicant.

(4) Taking or allowing another person to take the basic firearms safety course for one who is the applicant for the basic firearms safety certificate.

(5) Allowing another to take the objective test for the applicant, purchaser, or transferee.

(6) Allowing others to give unauthorized assistance during the examination.

(7) Reference to materials during the examination and cheating by the applicant.

(8) Providing originals or photocopies of the objective test, or any version thereof, to any person other than as specified in subdivision (f) of Section 12805.

(f) (1) No person who is licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code shall deliver, sell, or transfer a firearm to a person who is licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and whose licensed premises are located in this state unless one of the following conditions is met:

(A) The person presents proof of licensure pursuant to Section 12071 to that person.

(B) The person presents proof that he or she is exempt from licensure under Section 12071 to that person, in which case the person also shall present proof that the transaction is also exempt from the provisions of subdivision (d).

(2) (A) On or after January 1, 1998, within 60 days of bringing a pistol, revolver, or other firearm capable of being concealed upon the person into this state, a personal handgun importer shall do one of the following:

(i) Forward by prepaid mail or deliver in person to the Department of Justice, a report prescribed by the department including information concerning that individual and a description of the firearm in question.

(ii) Sell or transfer the firearm in accordance with the provisions of subdivision (d) or in accordance with the provisions of an exemption from subdivision (d).

(iii) Sell or transfer the firearm to a dealer licensed pursuant to Section 12071.

(iv) Sell or transfer the firearm to a sheriff or police department.

(B) If the personal handgun importer sells or transfers the pistol, revolver, or other firearm capable of being concealed upon the person pursuant to subdivision (d) of Section 12072 and the sale or transfer cannot be completed by the dealer to the purchaser or transferee, and the firearm can be returned to the personal handgun importer, the personal handgun importer shall have complied with the provisions of this paragraph.

(C) The provisions of this paragraph are cumulative and shall not be construed as restricting the application of any other law. However,

an act or omission punishable in different ways by this section and different provisions of the Penal Code shall not be punished under more than one provision.

(D) (i) On and after January 1, 1998, the department shall conduct a public education and notification program regarding this paragraph to ensure a high degree of publicity of the provisions of this paragraph.

(ii) As part of the public education and notification program described in this subparagraph, the department shall do all of the following:

(I) Work in conjunction with the Department of Motor Vehicles to ensure that any person who is subject to this paragraph is advised of the provisions of this paragraph, and provided with blank copies of the report described in clause (i) of subparagraph (A) at the time that person applies for a California driver's license or registers his or her motor vehicle in accordance with the Vehicle Code.

(II) Make the reports referred to in clause (i) of subparagraph (A) available to dealers licensed pursuant to Section 12071.

(III) Make the reports referred to in clause (i) of subparagraph (A) available to law enforcement agencies.

(IV) Make persons subject to the provisions of this paragraph aware of the fact that reports referred to in clause (i) of subparagraph (A) may be completed at either the licensed premises of dealers licensed pursuant to Section 12071 or at law enforcement agencies, that it is advisable to do so for the sake of accuracy and completeness of the reports, that prior to transporting a pistol, revolver, or other firearm capable of being concealed upon the person to a law enforcement agency in order to comply with subparagraph (A), the person should give prior notice to the law enforcement agency that he or she is doing so, and that in any event, the pistol, revolver, or other firearm capable of being concealed upon the person should be transported unloaded and in a locked container.

(iii) Any costs incurred by the department to implement this paragraph shall be absorbed by the department within its existing budget and the fees in the Dealers' Record of Sale Special Account allocated for implementation of this subparagraph pursuant to Section 12076.

(3) Where a person who is licensed as a collector pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto, whose licensed premises are within this state, acquires a pistol, revolver, or other firearm capable of being concealed upon the person that is a curio or relic, as defined in Section 178.11 of Title 27 of the Code of Federal Regulations, outside of this state, takes actual possession of that firearm outside of this state pursuant to the provisions of subsection (j) of Section 923 of Title 18 of the United States Code, as amended by Public Law 104-208, and transports that firearm into this state, within five days of that licensed collector transporting that

firearm into this state, he or she shall report to the department in a format prescribed by the department his or her acquisition of that firearm.

(4) (A) It is the intent of the Legislature that a violation of paragraph (2) or (3) shall not constitute a "continuing offense" and the statute of limitations for commencing a prosecution for a violation of paragraph (2) or (3) commences on the date that the applicable grace period specified in paragraph (2) or (3) expires.

(B) Paragraphs (2) and (3) shall not apply to a person who reports his or her ownership of a pistol, revolver, or other firearm capable of being concealed upon the person after the applicable grace period specified in paragraph (2) or (3) expires if evidence of that violation arises only as the result of the person submitting the report described in paragraph (2) or (3).

(g) (1) Except as provided in paragraph (2) or (3), a violation of this section is a misdemeanor.

(2) If any of the following circumstances apply, a violation of this section is punishable by imprisonment in the state prison for two, three, or four years.

(A) If the violation is of paragraph (1) of subdivision (a).

(B) If the defendant has a prior conviction of violating this section or former Section 12100 of this code or Section 8101 of the Welfare and Institutions Code.

(C) If the defendant has a prior conviction of violating any offense specified in subdivision (b) of Section 12021.1 or of a violation of Section 12020, 12220, or 12520, or of former Section 12560.

(D) If the defendant is in a prohibited class described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(E) A violation of this section by a person who actively participates in a "criminal street gang" as defined in Section 186.22.

(F) A violation of subdivision (b) involving the delivery of any firearm to a person who the dealer knows, or should know, is a minor.

(3) If any of the following circumstances apply, a violation of this section shall be punished by imprisonment in a county jail not exceeding one year or in the state prison, or by a fine not to exceed one thousand dollars ($1,000), or by both the fine and imprisonment.

(A) A violation of paragraph (2), (4), or (5) of subdivision (a).

(B) A violation of paragraph (3) of subdivision (a) involving the sale, loan, or transfer of a pistol, revolver, or other firearm capable of being concealed upon the person to a minor.

(C) A violation of subdivision (b) involving the delivery of a pistol, revolver, or other firearm capable of being concealed upon the person.

(D) A violation of paragraph (1), (3), (4), or (5) of subdivision (c) involving a pistol, revolver, or other firearm capable of being concealed upon the person.

(E) A violation of subdivision (d) involving a pistol, revolver, or other firearm capable of being concealed upon the person.

(F) A violation of subdivision (e).

(4) If both of the following circumstances apply, an additional term of imprisonment in the state prison for one, two, or three years shall be imposed in addition and consecutive to the sentence prescribed.

(A) A violation of paragraph (2) of subdivision (a) or subdivision (b).

(B) The firearm transferred in violation of paragraph (2) of subdivision (a) or subdivision (b) is used in the subsequent commission of a felony for which a conviction is obtained and the prescribed sentence is imposed.

SEC. 7.5. Section 12072 of the Penal Code is amended to read:

12072. (a) (1) No person, corporation, or firm shall knowingly supply, deliver, sell, or give possession or control of a firearm to any person within any of the classes prohibited by Section 12021 or 12021.1.

(2) No person, corporation, or dealer shall sell, supply, deliver, or give possession or control of a firearm to any person whom he or she has cause to believe to be within any of the classes prohibited by Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(3) (A) No person, corporation, or firm shall sell, loan, or transfer a firearm to a minor.

(B) Subparagraph (A) shall not apply to or affect those circumstances set forth in subdivision (p) of Section 12078.

(4) No person, corporation, or dealer shall sell, loan, or transfer a firearm to any person whom he or she knows or has cause to believe is not the actual purchaser or transferee of the firearm, or to any person who is not the person actually being loaned the firearm, if the person, corporation, or dealer has either of the following:

(A) Knowledge that the firearm is to be subsequently loaned, sold, or transferred to avoid the provisions of subdivision (c) or (d).

(B) Knowledge that the firearm is to be subsequently loaned, sold, or transferred to avoid the requirements of any exemption to the provisions of subdivision (c) or (d).

(5) No person, corporation, or dealer shall acquire a firearm for the purpose of selling, transferring, or loaning the firearm, if the person, corporation, or dealer has either of the following:

(A) In the case of a dealer, intent to violate subdivision (b) or (c).

(B) In any other case, intent to avoid either of the following:

(i) The provisions of subdivision (d).

(ii) The requirements of any exemption to the provisions of subdivision (d).

(6) The dealer shall comply with the provisions of paragraph (18) of subdivision (b) of Section 12071.

(7) The dealer shall comply with the provisions of paragraph (19) of subdivision (b) of Section 12071.

(8) No person shall sell or otherwise transfer his or her ownership in a pistol, revolver, or other firearm capable of being concealed upon the person unless the firearm bears either:

(A) The name of the manufacturer, the manufacturer's make or model, and a manufacturer's serial number assigned to that firearm.

(B) The identification number or mark assigned to the firearm by the Department of Justice pursuant to Section 12092.

(b) No person licensed under Section 12071 shall supply, sell, deliver, or give possession or control of a pistol, revolver, or firearm capable of being concealed upon the person to any person under the age of 21 years or any other firearm to a person under the age of 18 years.

(c) No dealer, whether or not acting pursuant to Section 12082, shall deliver a firearm to a person, as follows:

(1) Within 10 days of the application to purchase, or, after notice by the department pursuant to subdivision (d) of Section 12076, within 10 days of the submission to the department of any correction to the application, or within 10 days of the submission to the department of any fee required pursuant to subdivision (e) of Section 12076, whichever is later.

(2) Unless unloaded and securely wrapped or unloaded and in a locked container.

(3) Unless the purchaser, transferee, or person being loaned the firearm presents clear evidence of his or her identity and age, as defined in Section 12071, to the dealer.

(4) Whenever the dealer is notified by the Department of Justice that the person is in a prohibited class described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(5) Commencing April 1, 1994, no pistol, revolver, or other firearm capable of being concealed upon the person shall be delivered unless the purchaser, transferee, or person being loaned the firearm presents to the dealer a basic firearms safety certificate.

(d) Where neither party to the transaction holds a dealer's license issued pursuant to Section 12071, the parties to the transaction shall complete the sale, loan, or transfer of that firearm through either of the following:

(1) A licensed dealer pursuant to Section 12082.

(2) A law enforcement agency pursuant to Section 12084.

(e) No person may commit an act of collusion relating to Article 8 (commencing with Section 12800) of Chapter 6. For purposes of this section and Section 12071, collusion may be proven by any one of the following factors:

(1) Answering a test applicant's questions during an objective test relating to basic firearms safety.

(2) Knowingly grading the examination falsely.

(3) Providing an advance copy of the test to an applicant.

(4) Taking or allowing another person to take the basic firearms safety course for one who is the applicant for the basic firearms safety certificate.

(5) Allowing another to take the objective test for the applicant, purchaser, or transferee.

(6) Allowing others to give unauthorized assistance during the examination.

(7) Reference to materials during the examination and cheating by the applicant.

(8) Providing originals or photocopies of the objective test, or any version thereof, to any person other than as specified in subdivision (f) of Section 12805.

(f) (1) No person who is licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code shall deliver, sell, or transfer a firearm to a person who is licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and whose licensed premises are located in this state unless one of the following conditions is met:

(A) The person presents proof of licensure pursuant to Section 12071 to that person.

(B) The person presents proof that he or she is exempt from licensure under Section 12071 to that person, in which case the person also shall present proof that the transaction is also exempt from the provisions of subdivision (d).

(2) (A) On or after January 1, 1998, within 60 days of bringing a pistol, revolver, or other firearm capable of being concealed upon the person into this state, a personal handgun importer shall do one of the following:

(i) Forward by prepaid mail or deliver in person to the Department of Justice, a report prescribed by the department including information concerning that individual and a description of the firearm in question.

(ii) Sell or transfer the firearm in accordance with the provisions of subdivision (d) or in accordance with the provisions of an exemption from subdivision (d).

(iii) Sell or transfer the firearm to a dealer licensed pursuant to Section 12071.

(iv) Sell or transfer the firearm to a sheriff or police department.

(B) If the personal handgun importer sells or transfers the pistol, revolver, or other firearm capable of being concealed upon the person pursuant to subdivision (d) of Section 12072 and the sale or transfer cannot be completed by the dealer to the purchaser or transferee, and the firearm can be returned to the personal handgun importer, the personal handgun importer shall have complied with the provisions of this paragraph.

(C) The provisions of this paragraph are cumulative and shall not be construed as restricting the application of any other law. However,

an act or omission punishable in different ways by this section and different provisions of the Penal Code shall not be punished under more than one provision.

(D) (i) On and after January 1, 1998, the department shall conduct a public education and notification program regarding this paragraph to ensure a high degree of publicity of the provisions of this paragraph.

(ii) As part of the public education and notification program described in this subparagraph, the department shall do all of the following:

(I) Work in conjunction with the Department of Motor Vehicles to ensure that any person who is subject to this paragraph is advised of the provisions of this paragraph, and provided with blank copies of the report described in clause (i) of subparagraph (A) at the time that person applies for a California driver's license or registers his or her motor vehicle in accordance with the Vehicle Code.

(II) Make the reports referred to in clause (i) of subparagraph (A) available to dealers licensed pursuant to Section 12071.

(III) Make the reports referred to in clause (i) of subparagraph (A) available to law enforcement agencies.

(IV) Make persons subject to the provisions of this paragraph aware of the fact that reports referred to in clause (i) of subparagraph (A) may be completed at either the licensed premises of dealers licensed pursuant to Section 12071 or at law enforcement agencies, that it is advisable to do so for the sake of accuracy and completeness of the reports, that prior to transporting a pistol, revolver, or other firearm capable of being concealed upon the person to a law enforcement agency in order to comply with subparagraph (A), the person should give prior notice to the law enforcement agency that he or she is doing so, and that in any event, the pistol, revolver, or other firearm capable of being concealed upon the person should be transported unloaded and in a locked container.

(iii) Any costs incurred by the department to implement this paragraph shall be absorbed by the department within its existing budget and the fees in the Dealers' Record of Sale Special Account allocated for implementation of this subparagraph pursuant to Section 12076.

(3) Where a person who is licensed as a collector pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto, whose licensed premises are within this state, acquires a pistol, revolver, or other firearm capable of being concealed upon the person that is a curio or relic, as defined in Section 178.11 of Title 27 of the Code of Federal Regulations, outside of this state, takes actual possession of that firearm outside of this state pursuant to the provisions of subsection (j) of Section 923 of Title 18 of the United States Code, as amended by Public Law 104-208, and transports that firearm into this state, within five days of that licensed collector transporting that

firearm into this state, he or she shall report to the department in a format prescribed by the department his or her acquisition of that firearm.

(4) (A) It is the intent of the Legislature that a violation of paragraph (2) or (3) shall not constitute a "continuing offense" and the statute of limitations for commencing a prosecution for a violation of paragraph (2) or (3) commences on the date that the applicable grace period specified in paragraph (2) or (3) expires.

(B) Paragraphs (2) and (3) shall not apply to a person who reports his or her ownership of a pistol, revolver, or other firearm capable of being concealed upon the person after the applicable grace period specified in paragraph (2) or (3) expires if evidence of that violation arises only as the result of the person submitting the report described in paragraph (2) or (3).

(g) (1) Except as provided in paragraph (2) or (3), a violation of this section is a misdemeanor.

(2) If any of the following circumstances apply, a violation of this section is punishable by imprisonment in the state prison for two, three, or four years.

(A) If the violation is of paragraph (1) of subdivision (a).

(B) If the defendant has a prior conviction of violating this section or former Section 12100 of this code or Section 8101 of the Welfare and Institutions Code.

(C) If the defendant has a prior conviction of violating any offense specified in subdivision (b) of Section 12021.1 or of a violation of Section 12020, 12220, or 12520, or of former Section 12560.

(D) If the defendant is in a prohibited class described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(E) A violation of this section by a person who actively participates in a "criminal street gang" as defined in Section 186.22.

(F) A violation of subdivision (b) involving the delivery of any firearm to a person who the dealer knows, or should know, is a minor.

(3) If any of the following circumstances apply, a violation of this section shall be punished by imprisonment in a county jail not exceeding one year or in the state prison, or by a fine not to exceed one thousand dollars ($1,000), or by both the fine and imprisonment.

(A) A violation of paragraph (2), (4), or (5), of subdivision (a).

(B) A violation of paragraph (3) of subdivision (a) involving the sale, loan, or transfer of a pistol, revolver, or other firearm capable of being concealed upon the person to a minor.

(C) A violation of subdivision (b) involving the delivery of a pistol, revolver, or other firearm capable of being concealed upon the person.

(D) A violation of paragraph (1), (3), (4), or (5) of subdivision (c) involving a pistol, revolver, or other firearm capable of being concealed upon the person.

(E) A violation of subdivision (d) involving a pistol, revolver, or other firearm capable of being concealed upon the person.

(F) A violation of subdivision (e).

(4) If both of the following circumstances apply, an additional term of imprisonment in the state prison for one, two, or three years shall be imposed in addition and consecutive to the sentence prescribed:

(A) A violation of paragraph (2) of subdivision (a) or subdivision (b).

(B) The firearm transferred in violation of paragraph (2) of subdivision (a) or subdivision (b) is used in the subsequent commission of a felony for which a conviction is obtained and the prescribed sentence is imposed.

SEC. 8. Section 12077 of the Penal Code is amended to read:

12077. (a) The Department of Justice shall prescribe the form of the register and the record of electronic or telephonic transfer pursuant to Section 12074.

(b) For pistols, revolvers, and other firearms capable of being concealed upon the person, information contained in the register or record of electronic or telephonic transfer shall be the date and time of sale, make of firearm, peace officer exemption status pursuant to subdivision (a) of Section 12078 and the agency name, dealer waiting period exemption pursuant to subdivision (n) of Section 12078, dangerous weapons permitholder waiting period exemption pursuant to subdivision (r) of Section 12078, curio and relic waiting period exemption pursuant to subdivision (t) of Section 12078, California Firearms Dealer number issued pursuant to Section 12071, purchaser's basic firearms safety certificate number issued pursuant to Sections 12805 and 12809, manufacturer's name if stamped on the firearm, model name or number, if stamped on the firearm, if applicable, serial number, other number (if more than one serial number is stamped on the firearm), any identification number or mark assigned to the firearm pursuant to Section 12092, caliber, type of firearm, if the firearm is new or used, barrel length, color of the firearm, full name of purchaser, purchaser's complete date of birth, purchaser's local address, if current address is temporary, complete permanent address of purchaser, identification of purchaser, purchaser's place of birth (state or country), purchaser's complete telephone number, purchaser's occupation, purchaser's sex, purchaser's physical description, all legal names and aliases ever used by the purchaser, yes or no answer to questions that prohibit purchase including, but not limited to, conviction of a felony as described in Section 12021 or an offense described in Section 12021.1, the purchaser's status as a person described in Section 8100 of the Welfare and Institutions Code, whether the purchaser is a person who has been adjudicated by a court to be a danger to others or found not guilty by reason of insanity, whether the purchaser is a person who has been found incompetent to stand trial or placed under

conservatorship by a court pursuant to Section 8103 of the Welfare and Institutions Code, signature of purchaser, signature of salesperson (as a witness to the purchaser's signature), name and complete address of the dealer or firm selling the firearm as shown on the dealer's license, the establishment number, if assigned, the dealer's complete business telephone number, any information required by Section 12082, and a statement of the penalties for any person signing a fictitious name or address or for knowingly furnishing any incorrect information or for knowingly omitting any information required to be provided for the register.

(c) For firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, information contained in the register or record of electronic or telephonic transfer shall be the date and time of sale, peace officer exemption status pursuant to subdivision (a) of Section 12078 and the agency name, auction or event waiting period exemption pursuant to subdivision (g) of Section 12078, California Firearms Dealer number issued pursuant to Section 12071, dangerous weapons permitholder waiting period exemption pursuant to subdivision (r) of Section 12078, curio and relic waiting period exemption pursuant to paragraph (1) of subdivision (t) of Section 12078, full name of purchaser, purchaser's complete date of birth, purchaser's local address, if current address is temporary, complete permanent address of purchaser, identification of purchaser, purchaser's place of birth (state or country), purchaser's complete telephone number, purchaser's occupation, purchaser's sex, purchaser's physical description, all legal names and aliases ever used by the purchaser, yes or no answer to questions that prohibit purchase, including, but not limited to, conviction of a felony as described in Section 12021 or an offense described in Section 12021.1, the purchaser's status as a person described in Section 8100 of the Welfare and Institutions Code, whether the purchaser is a person who has been adjudicated by a court to be a danger to others or found not guilty by reason of insanity, whether the purchaser is a person who has been found incompetent to stand trial or placed under conservatorship by a court pursuant to Section 8103 of the Welfare and Institutions Code, signature of purchaser, signature of salesperson (as a witness to the purchaser's signature), name and complete address of the dealer or firm selling the firearm as shown on the dealer's license, the establishment number, if assigned, the dealer's complete business telephone number, any information required by Section 12082, and a statement of the penalties for any person signing a fictitious name or address or for knowingly furnishing any incorrect information or for knowingly omitting any information required to be provided for the register.

(d) Where the register is used, the following shall apply:

(1) Dealers shall use ink to complete each document.

(2) The dealer or salesperson making a sale shall ensure that all information is provided legibly. The dealer and salespersons shall be informed that incomplete or illegible information will delay sales.

(3) Each dealer shall be provided instructions regarding the procedure for completion of the form and routing of the form. Dealers shall comply with these instructions which shall include the information set forth in this subdivision.

(4) One firearm transaction shall be reported on each record of sale document. For purposes of this subdivision, a "transaction" means a single sale, loan, or transfer of any number of firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person.

(e) The dealer or salesperson making a sale shall ensure that all required information has been obtained from the purchaser. The dealer and all salespersons shall be informed that incomplete information will delay sales.

(f) As used in this section, the following definitions shall control:

(1) "Purchaser" means the purchaser or transferee of a firearm or the person being loaned a firearm.

(2) "Purchase" means the purchase, loan, or transfer of a firearm.

(3) "Sale" means the sale, loan, or transfer of a firearm.

SEC. 9. Section 12078 of the Penal Code is amended to read:

12078. (a) (1) The waiting periods described in Sections 12071, 12072, and 12084 shall not apply to deliveries, transfers, or sales of firearms made to persons properly identified as full-time paid peace officers as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, provided that the peace officers are authorized by their employer to carry firearms while in the performance of their duties. Proper identification is defined as verifiable written certification from the head of the agency by which the purchaser or transferee is employed, identifying the purchaser or transferee as a peace officer who is authorized to carry firearms while in the performance of his or her duties, and authorizing the purchase or transfer. The certification shall be delivered to the dealer or local law enforcement agency acting pursuant to Section 12084 at the time of purchase or transfer and the purchaser or transferee shall identify himself or herself as the person authorized in the certification. The dealer or local law enforcement agency shall keep the certification with the record of sale, or LEFT, as the case may be. On the date that the delivery, sale, or transfer is made, the dealer delivering the firearm or the law enforcement agency processing the transaction pursuant to Section 12084 shall forward by prepaid mail to the Department of Justice a report of the transaction pursuant to subdivision (b) or (c) of Section 12077 or Section 12084. If electronic or telephonic transfer of applicant information is used, on the date that the application to purchase is completed, the dealer delivering the firearm shall transmit to the Department of Justice an electronic

or telephonic report of the transaction as is indicated in subdivision (b) or (c) of Section 12077.

(2) The preceding provisions of this article do not apply to deliveries, transfers, or sales of firearms made to authorized law enforcement representatives of cities, counties, cities and counties, or state or federal governments for exclusive use by those governmental agencies if, prior to the delivery, transfer, or sale of these firearms, written authorization from the head of the agency authorizing the transaction is presented to the person from whom the purchase, delivery, or transfer is being made. Proper written authorization is defined as verifiable written certification from the head of the agency by which the purchaser or transferee is employed, identifying the employee as an individual authorized to conduct the transaction, and authorizing the transaction for the exclusive use of the agency by which he or she is employed. Within 10 days of the date a pistol, revolver, or other firearm capable of being concealed upon the person is acquired by the agency, a record of the same shall be entered as an institutional weapon into the Automated Firearms System (AFS) via the California Law Enforcement Telecommunications System (CLETS) by the law enforcement or state agency. Those agencies without access to AFS shall arrange with the sheriff of the county in which the agency is located to input this information via this system.

(3) The preceding provisions of this article do not apply to the loan of a firearm made by an authorized law enforcement representative of a city, county, or city and county, or the state or federal government to a peace officer employed by that agency and authorized to carry a firearm for the carrying and use of that firearm by that peace officer in the course and scope of his or her duties.

(4) The preceding provisions of this article do not apply to the delivery, sale, or transfer of a firearm by a law enforcement agency to a peace officer pursuant to Section 10334 of the Public Contract Code. Within 10 days of the date that a pistol, revolver, or other firearm capable of being concealed upon the person is sold, delivered, or transferred pursuant to Section 10334 of the Public Contract Code to that peace officer, the name of the officer and the make, model, serial number, and other identifying characteristics of the firearm being sold, transferred, or delivered shall be entered into the Automated Firearms System (AFS) via the California Law Enforcement Telecommunications System (CLETS) by the law enforcement or state agency that sold, transferred, or delivered the firearm. Those agencies without access to AFS shall arrange with the sheriff of the county in which the agency is located to input this information via this system.

(5) The preceding provisions of this article do not apply to the delivery, sale, or transfer of a firearm by a law enforcement agency to a retiring peace officer who is authorized to carry a firearm pursuant to Section 12027.1. Within 10 days of the date that a pistol,

revolver, or other firearm capable of being concealed upon the person is sold, delivered, or transferred to that retiring peace officer, the name of the officer and the make, model, serial number, and other identifying characteristics of the firearm being sold, transferred, or delivered shall be entered into the Automated Firearms System (AFS) via the California Law Enforcement Telecommunications System (CLETS) by the law enforcement or state agency that sold, transferred, or delivered the firearm. Those agencies without access to AFS shall arrange with the sheriff of the county in which the agency is located to input this information via this system.

(6) Subdivision (d) of Section 12072 does not apply to sales, deliveries, or transfers of firearms to authorized representatives of cities, cities and counties, counties, or state or federal governments for those governmental agencies where the entity is acquiring the weapon as part of an authorized, voluntary program where the entity is buying or receiving weapons from private individuals. Any weapons acquired pursuant to this subdivision shall be disposed of pursuant to the applicable provisions of Section 12028 or 12032.

(b) Section 12071 and subdivisions (c) and (d) of Section 12072 shall not apply to deliveries, sales, or transfers of firearms between or to importers and manufacturers of firearms licensed to engage in that business pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(c) (1) Subdivision (d) of Section 12072 shall not apply to the infrequent transfer of a firearm that is not a pistol, revolver, or other firearm capable of being concealed upon the person by gift, bequest, intestate succession, or other means by one individual to another if both individuals are members of the same immediate family.

(2) Subdivision (d) of Section 12072 shall not apply to the infrequent transfer of a pistol, revolver, or other firearm capable of being concealed upon the person by gift, bequest, intestate succession, or other means by one individual to another if both individuals are members of the same immediate family and both of the following conditions are met:

(A) The person to whom the firearm is transferred shall, within 30 days of taking possession of the firearm, forward by prepaid mail or deliver in person to the Department of Justice, a report that includes information concerning the individual taking possession of the firearm, how title was obtained and from whom, and a description of the firearm in question. The report forms that individuals complete pursuant to this paragraph shall be provided to them by the Department of Justice.

(B) Prior to taking possession of the firearm, the person taking title to the firearm shall obtain a basic firearm safety certificate.

(3) As used in this subdivision, "immediate family member" means any one of the following relationships:

(A) Parent and child.

(B) Grandparent and grandchild.

(d) Subdivision (d) of Section 12072 shall not apply to the infrequent loan of firearms between persons who are personally known to each other for any lawful purpose, if the loan does not exceed 30 days in duration.

(e) Section 12071 and subdivisions (c) and (d) of Section 12072 shall not apply to the delivery of a firearm to a gunsmith for service or repair.

(f) Subdivision (d) of Section 12072 shall not apply to the sale, delivery, or transfer of firearms by persons who reside in this state to persons who reside outside this state who are licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto, if the sale, delivery, or transfer is in accordance with Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(g) (1) Subdivision (d) of Section 12072 shall not apply to the infrequent sale or transfer of a firearm, other than a pistol, revolver, or other firearm capable of being concealed upon the person, at auctions or similar events conducted by nonprofit mutual or public benefit corporations organized pursuant to the Corporations Code.

As used in this paragraph, the term "infrequent" shall not be construed to prohibit different local chapters of the same nonprofit corporation from conducting auctions or similar events, provided the individual local chapter conducts the auctions or similar events infrequently. It is the intent of the Legislature that different local chapters, representing different localities, be entitled to invoke the exemption created by this paragraph, notwithstanding the frequency with which other chapters of the same nonprofit corporation may conduct auctions or similar events.

(2) Subdivision (d) of Section 12072 shall not apply to the transfer of a firearm other than a pistol, revolver, or other firearm capable of being concealed upon the person, if the firearm is donated for an auction or similar event described in paragraph (1) and the firearm is delivered to the nonprofit corporation immediately preceding, or contemporaneous with, the auction or similar event.

(3) The waiting period described in Sections 12071 and 12072 shall not apply to a dealer who delivers a firearm other than a pistol, revolver, or other firearm capable of being concealed upon the person, at an auction or similar event described in paragraph (1), as authorized by subparagraph (C) of paragraph (1) of subdivision (b) of Section 12071. Within two business days of completion of the application to purchase, the dealer shall forward by prepaid mail to the Department of Justice a report of the same as is indicated in subdivision (c) of Section 12077. If the electronic or telephonic transfer of applicant information is used, within two business days of completion of the application to purchase, the dealer delivering the

firearm shall transmit to the Department of Justice an electronic or telephonic report of the same as is indicated in subdivision (c) of Section 12077.

(h) Subdivision (d) of Section 12072 shall not apply to the loan of a firearm for the purposes of shooting at targets if the loan occurs on the premises of a target facility that holds a business or regulatory license or on the premises of any club or organization organized for the purposes of practicing shooting at targets upon established ranges, whether public or private, if the firearm is at all times kept within the premises of the target range or on the premises of the club or organization.

(i) (1) Subdivision (d) of Section 12072 shall not apply to a person who takes title or possession of firearms by operation of law if all the following conditions are met:

(A) The person is not prohibited by Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code from possessing firearms.

(B) If the firearms are pistols, revolvers, or other firearms capable of being concealed upon the person, and the person is not a levying officer as defined in Section 481.140, 511.060, or 680.210 of the Code of Civil Procedure, the person shall, within 30 days of taking possession, forward by prepaid mail or deliver in person to the Department of Justice, a report of the same and the type of information concerning the individual taking possession of the firearm, how title or possession was obtained and from whom, and a description of the firearm in question. The reports that individuals complete pursuant to this paragraph shall be provided to them by the Department of Justice.

(C) In the case of a transmutation of property between spouses made in accordance with Section 850 of the Family Code consisting of a pistol, revolver, or other firearm capable of being concealed upon the person, taking place on or after April 1, 1994, a basic firearms safety certificate shall be required prior to taking possession of the firearm.

(2) Subdivision (d) of Section 12072 shall not apply to a person who takes possession of a firearm by operation of law in a representative capacity who transfers ownership of the firearm to himself or herself in his or her individual capacity. In the case of a pistol, revolver, or other firearm capable of being concealed upon the person, on and after April 1, 1994, that individual shall have a basic firearms safety certificate in order for the exemption set forth in this paragraph to apply.

(j) Subdivision (d) of Section 12072 shall not apply to deliveries, transfers, or returns of firearms made pursuant to Section 12028, 12028.5, or 12030.

(k) Section 12071 and subdivision (c) of Section 12072 shall not apply to any of the following:

(1) The delivery, sale, or transfer of unloaded firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person by a dealer to another dealer upon proof that the person receiving the firearm is licensed pursuant to Section 12071.

(2) The delivery, sale, or transfer of unloaded firearms by dealers to persons who reside outside this state who are licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(3) The delivery, sale, or transfer of unloaded firearms to a wholesaler if the firearms are being returned to the wholesaler and are intended as merchandise in the wholesaler's business.

(4) The delivery, sale, or transfer of unloaded firearms by one dealer to another dealer if the firearms are intended as merchandise in the receiving dealer's business upon proof that the person receiving the firearm is licensed pursuant to Section 12071.

(5) The delivery, sale, or transfer of an unloaded firearm that is not a pistol, revolver, or other firearm capable of being concealed upon the person by a dealer to himself or herself.

(6) The loan of an unloaded firearm by a dealer who also operates a target facility that holds a business or regulatory license on the premises of the building designated in the license or whose building designated in the license is on the premises of any club or organization organized for the purposes of practicing shooting at targets upon established ranges, whether public or private, to a person at that target facility or that club or organization, if the firearm is at all times kept within the premises of the target range or on the premises of the club or organization.

(*l*) A person who is exempt from subdivision (d) of Section 12072 or is otherwise not required by law to report his or her acquisition, ownership, or disposal of a pistol, revolver, or other firearm capable of being concealed upon the person or who moves out of this state with his or her pistol, revolver, or other firearm capable of being concealed upon the person may submit a report of the same to the Department of Justice in a format prescribed by the department.

(m) Subdivision (d) of Section 12072 shall not apply to the delivery, sale, or transfer of unloaded firearms to a wholesaler as merchandise in the wholesaler's business by manufacturers or importers licensed to engage in that business pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto, or by another wholesaler, if the delivery, sale, or transfer is made in accordance with Chapter 44 (commencing with Section 921) of Title 18 of the United States Code.

(n) (1) The waiting period described in Section 12071 or 12072 shall not apply to the delivery, sale, or transfer of a pistol, revolver, or other firearm capable of being concealed upon the person by a dealer in either of the following situations:

(A) The dealer is delivering the firearm to another dealer and it is not intended as merchandise in the receiving dealer's business.

(B) The dealer is delivering the firearm to himself or herself and it is not intended as merchandise in his or her business.

(2) In order for this subdivision to apply, both of the following shall occur:

(A) If the dealer is receiving the firearm from another dealer, the dealer receiving the firearm shall present proof to the dealer delivering the firearm that he or she is licensed pursuant to Section 12071.

(B) Whether the dealer is delivering, selling, or transferring the firearm to himself or herself or to another dealer, on the date that the application to purchase is completed, the dealer delivering the firearm shall forward by prepaid mail to the Department of Justice a report of the same and the type of information concerning the purchaser or transferee as is indicated in subdivision (b) of Section 12077. Where the electronic or telephonic transfer of applicant information is used, on the date that the application to purchase is completed, the dealer delivering the firearm shall transmit an electronic or telephonic report of the same and the type of information concerning the purchaser or transferee as is indicated in subdivision (b) of Section 12077.

(o) Section 12071 and subdivisions (c) and (d) of Section 12072 shall not apply to the delivery, sale, or transfer of firearms regulated pursuant to Section 12020, Chapter 2 (commencing with Section 12200), or Chapter 2.3 (commencing with Section 12275), if the delivery, sale, or transfer is conducted in accordance with the applicable provisions of Section 12020, Chapter 2 (commencing with Section 12200), or Chapter 2.3 (commencing with Section 12275).

(p) (1) Paragraph (3) of subdivision (a) and subdivision (d) of Section 12072 shall not apply to the loan of a firearm that is not a pistol, revolver, or other firearm capable of being concealed upon the person to a minor, with the express permission of the parent or legal guardian of the minor, if the loan does not exceed 30 days in duration and is for a lawful purpose.

(2) Paragraph (3) of subdivision (a) and subdivision (d) of Section 12072 shall not apply to the loan of a pistol, revolver, or other firearm capable of being concealed upon the person to a minor by a person who is not the parent or legal guardian of the minor if all of the following circumstances exist:

(A) The minor has the written consent of his or her parent or legal guardian that is presented at the time of, or prior to the time of, the loan, or is accompanied by his or her parent or legal guardian at the time the loan is made.

(B) The minor is being loaned the firearm for the purpose of engaging in a lawful, recreational sport, including, but not limited to, competitive shooting, or agricultural, ranching, or hunting activity,

or a motion picture, television, or video production, or entertainment or theatrical event, the nature of which involves the use of a firearm.

(C) The duration of the loan does not exceed the amount of time that is reasonably necessary to engage in the lawful, recreational sport, including, but not limited to, competitive shooting, or agricultural, ranching, or hunting activity, or a motion picture, television, or video production, or entertainment or theatrical event, the nature of which involves the use of a firearm.

(D) The duration of the loan does not, in any event, exceed 10 days.

(3) Paragraph (3) of subdivision (a) and subdivision (d) of Section 12072 shall not apply to the loan of a pistol, revolver, or other firearm capable of being concealed upon the person to a minor by his or her parent or legal guardian if both of the following circumstances exist:

(A) The minor is being loaned the firearm for the purposes of engaging in a lawful, recreational sport, including, but not limited to, competitive shooting, or agricultural, ranching, or hunting activity, or a motion picture, television, or video production, or entertainment or theatrical event, the nature of which involves the use of a firearm.

(B) The duration of the loan does not exceed the amount of time that is reasonably necessary to engage in the lawful, recreational sport, including, but not limited to, competitive shooting, or agricultural, ranching, or hunting activity, or a motion picture, television, or video production, or entertainment or theatrical event, the nature of which involves the use of a firearm.

(4) Paragraph (3) of subdivision (a) of Section 12072 shall not apply to the transfer or loan of a firearm that is not a pistol, revolver, or other firearm capable of being concealed upon the person to a minor by his or her parent or legal guardian.

(5) Paragraph (3) of subdivision (a) of Section 12072 shall not apply to the transfer or loan of a firearm that is not a pistol, revolver, or other firearm capable of being concealed upon the person to a minor by his or her grandparent who is not the legal guardian of the minor if the transfer is done with the express permission of the parent or legal guardian of the minor.

(q) Subdivision (d) of Section 12072 shall not apply to the loan of a firearm that is not a pistol, revolver, or other firearm capable of being concealed upon the person to a licensed hunter for use by that licensed hunter for a period of time not to exceed the duration of the hunting season for which that firearm is to be used.

(r) The waiting period described in Section 12071, 12072, or 12084 shall not apply to the delivery, sale, or transfer of a firearm to the holder of a special weapons permit issued by the Department of Justice issued pursuant to Section 12095, 12230, 12250, or 12305. On the date that the application to purchase is completed, the dealer delivering the firearm or the law enforcement agency processing the transaction pursuant to Section 12084, shall forward by prepaid mail to the Department of Justice a report of the same as described in

subdivision (b) or (c) of Section 12077 or Section 12084. If the electronic or telephonic transfer of applicant information is used, on the date that the application to purchase is completed, the dealer delivering the firearm shall transmit to the Department of Justice an electronic or telephonic report of the same as is indicated in subdivision (b) or (c) of Section 12077.

(s) Subdivision (d) of Section 12072 shall not apply to the loan of an unloaded firearm or the loan of a firearm loaded with blank cartridges for use solely as a prop for a motion picture, television, or video production or an entertainment or theatrical event.

(t) (1) The waiting period described in Sections 12071, 12072, and 12084 shall not apply to the sale, delivery, loan, or transfer of a firearm that is a curio or relic, as defined in Section 178.11 of Title 27 of the Code of Federal Regulations, by a dealer or through a law enforcement agency to a person who is licensed as a collector pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto who has a current certificate of eligibility issued to him or her by the Department of Justice pursuant to Section 12071. On the date that the delivery, sale, or transfer is made, the dealer delivering the firearm or the law enforcement agency processing the transaction pursuant to Section 12084, shall forward by prepaid mail to the Department of Justice a report of the transaction pursuant to subdivision (b) or (c) of Section 12077 or Section 12084. If the electronic or telephonic transfer of applicant information is used, on the date that the application to purchase is completed, the dealer delivering the firearm shall transmit to the Department of Justice an electronic or telephonic report of the transaction as is indicated in subdivision (b) or (c) of Section 12077.

(2) Subdivision (d) of Section 12072 shall not apply to the infrequent sale, loan, or transfer of a firearm that is not a pistol, revolver, or other firearm capable of being concealed upon the person, which is a curio or relic manufactured at least 50 years prior to the current date, but not including replicas thereof, as defined in Section 178.11 of Title 27 of the Code of Federal Regulations.

(u) As used in this section:

(1) "Infrequent" has the same meaning as in paragraph (1) of subdivision (c) of Section 12070.

(2) "A person taking title or possession of firearms by operation of law" includes, but is not limited to, any of the following instances wherein an individual receives title to, or possession of, firearms:

(A) The executor or administrator of an estate if the estate includes firearms.

(B) A secured creditor or an agent or employee thereof when the firearms are possessed as collateral for, or as a result of, a default under a security agreement under the Commercial Code.

(C) A levying officer, as defined in Section 481.140, 511.060, or 680.260 of the Code of Civil Procedure.

(D) A receiver performing his or her functions as a receiver if the receivership estate includes firearms.

(E) A trustee in bankruptcy performing his or her duties if the bankruptcy estate includes firearms.

(F) An assignee for the benefit of creditors performing his or her functions as an assignee, if the assignment includes firearms.

(G) A transmutation of property consisting of firearms pursuant to Section 850 of the Family Code.

(H) Firearms passing to a surviving spouse pursuant to Chapter 1 (commencing with Section 13500) of Part 2 of Division 8 of the Probate Code.

(I) Firearms received by the family of a police officer or deputy sheriff from a local agency pursuant to Section 50081 of the Government Code.

SEC. 9.5. Section 12078 of the Penal Code is amended to read:

12078. (a) (1) The waiting periods described in Sections 12071, 12072, and 12084 shall not apply to deliveries, transfers, or sales of firearms made to persons properly identified as full-time paid peace officers as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, provided that the peace officers are authorized by their employer to carry firearms while in the performance of their duties. Proper identification is defined as verifiable written certification from the head of the agency by which the purchaser or transferee is employed, identifying the purchaser or transferee as a peace officer who is authorized to carry firearms while in the performance of his or her duties, and authorizing the purchase or transfer. The certification shall be delivered to the dealer or local law enforcement agency acting pursuant to Section 12084 at the time of purchase or transfer and the purchaser or transferee shall identify himself or herself as the person authorized in the certification. The dealer or local law enforcement agency shall keep the certification with the record of sale, or LEFT, as the case may be. On the date that the delivery, sale, or transfer is made, the dealer delivering the firearm or the law enforcement agency processing the transaction pursuant to Section 12084 shall forward by prepaid mail to the Department of Justice a report of the transaction pursuant to subdivision (b) or (c) of Section 12077 or Section 12084. If electronic or telephonic transfer of applicant information is used, on the date that the application to purchase is completed, the dealer delivering the firearm shall transmit to the Department of Justice an electronic or telephonic report of the transaction as is indicated in subdivision (b) or (c) of Section 12077.

(2) The preceding provisions of this article do not apply to deliveries, transfers, or sales of firearms made to authorized law enforcement representatives of cities, counties, cities and counties, or state or federal governments for exclusive use by those governmental agencies if, prior to the delivery, transfer, or sale of these firearms, written authorization from the head of the agency

authorizing the transaction is presented to the person from whom the purchase, delivery, or transfer is being made. Proper written authorization is defined as verifiable written certification from the head of the agency by which the purchaser or transferee is employed, identifying the employee as an individual authorized to conduct the transaction, and authorizing the transaction for the exclusive use of the agency by which he or she is employed. Within 10 days of the date a pistol, revolver, or other firearm capable of being concealed upon the person is acquired by the agency, a record of the same shall be entered as an institutional weapon into the Automated Firearms System (AFS) via the California Law Enforcement Telecommunications System (CLETS) by the law enforcement or state agency. Those agencies without access to AFS shall arrange with the sheriff of the county in which the agency is located to input this information via this system.

(3) The preceding provisions of this article do not apply to the loan of a firearm made by an authorized law enforcement representative of a city, county, or city and county, or the state or federal government to a peace officer employed by that agency and authorized to carry a firearm for the carrying and use of that firearm by that peace officer in the course and scope of his or her duties.

(4) The preceding provisions of this article do not apply to the delivery, sale, or transfer of a firearm by a law enforcement agency to a peace officer pursuant to Section 10334 of the Public Contract Code. Within 10 days of the date that a pistol, revolver, or other firearm capable of being concealed upon the person is sold, delivered, or transferred pursuant to Section 10334 of the Public Contract Code to that peace officer, the name of the officer and the make, model, serial number, and other identifying characteristics of the firearm being sold, transferred, or delivered shall be entered into the Automated Firearms System (AFS) via the California Law Enforcement Telecommunications System (CLETS) by the law enforcement or state agency that sold, transferred, or delivered the firearm. Those agencies without access to AFS shall arrange with the sheriff of the county in which the agency is located to input this information via this system.

(5) The preceding provisions of this article do not apply to the delivery, sale, or transfer of a firearm by a law enforcement agency to a retiring peace officer who is authorized to carry a firearm pursuant to Section 12027.1. Within 10 days of the date that a pistol, revolver, or other firearm capable of being concealed upon the person is sold, delivered, or transferred to that retiring peace officer, the name of the officer and the make, model, serial number, and other identifying characteristics of the firearm being sold, transferred, or delivered shall be entered into the Automated Firearms System (AFS) via the California Law Enforcement Telecommunications System (CLETS) by the law enforcement or state agency that sold, transferred, or delivered the firearm. Those

agencies without access to AFS shall arrange with the sheriff of the county in which the agency is located to input this information via this system.

(6) Subdivision (d) of Section 12072 does not apply to sales, deliveries, or transfers of firearms to authorized representatives of cities, cities and counties, counties, or state or federal governments for those governmental agencies where the entity is acquiring the weapon as part of an authorized, voluntary program where the entity is buying or receiving weapons from private individuals. Any weapons acquired pursuant to this subdivision shall be disposed of pursuant to the applicable provisions of Section 12028 or 12032.

(b) Section 12071 and subdivisions (c) and (d) of Section 12072 shall not apply to deliveries, sales, or transfers of firearms between or to importers and manufacturers of firearms licensed to engage in that business pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(c) (1) Subdivision (d) of Section 12072 shall not apply to the infrequent transfer of a firearm that is not a pistol, revolver, or other firearm capable of being concealed upon the person by gift, bequest, intestate succession, or other means by one individual to another if both individuals are members of the same immediate family.

(2) Subdivision (d) of Section 12072 shall not apply to the infrequent transfer of a pistol, revolver, or other firearm capable of being concealed upon the person by gift, bequest, intestate succession, or other means by one individual to another if both individuals are members of the same immediate family and both of the following conditions are met:

(A) The person to whom the firearm is transferred shall, within 30 days of taking possession of the firearm, forward by prepaid mail or deliver in person to the Department of Justice, a report that includes information concerning the individual taking possession of the firearm, how title was obtained and from whom, and a description of the firearm in question. The report forms that individuals complete pursuant to this paragraph shall be provided to them by the Department of Justice.

(B) Prior to taking possession of the firearm, the person taking title to the firearm shall obtain a basic firearm safety certificate.

(3) As used in this subdivision, "immediate family member" means any one of the following relationships:

(A) Parent and child.

(B) Grandparent and grandchild.

(d) Subdivision (d) of Section 12072 shall not apply to the infrequent loan of firearms between persons who are personally known to each other for any lawful purpose, if the loan does not exceed 30 days in duration.

(e) Section 12071 and subdivisions (c) and (d) of Section 12072 shall not apply to the delivery of a firearm to a gunsmith for service or repair.

(f) Subdivision (d) of Section 12072 shall not apply to the sale, delivery, or transfer of firearms by persons who reside in this state to persons who reside outside this state who are licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto, if the sale, delivery, or transfer is in accordance with Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(g) (1) Subdivision (d) of Section 12072 shall not apply to the infrequent sale or transfer of a firearm, other than a pistol, revolver, or other firearm capable of being concealed upon the person, at auctions or similar events conducted by nonprofit mutual or public benefit corporations organized pursuant to the Corporations Code.

As used in this paragraph, the term "infrequent" shall not be construed to prohibit different local chapters of the same nonprofit corporation from conducting auctions or similar events, provided the individual local chapter conducts the auctions or similar events infrequently. It is the intent of the Legislature that different local chapters, representing different localities, be entitled to invoke the exemption created by this paragraph, notwithstanding the frequency with which other chapters of the same nonprofit corporation may conduct auctions or similar events.

(2) Subdivision (d) of Section 12072 shall not apply to the transfer of a firearm other than a pistol, revolver, or other firearm capable of being concealed upon the person, if the firearm is donated for an auction or similar event described in paragraph (1) and the firearm is delivered to the nonprofit corporation immediately preceding, or contemporaneous with, the auction or similar event.

(3) The waiting period described in Sections 12071 and 12072 shall not apply to a dealer who delivers a firearm other than a pistol, revolver, or other firearm capable of being concealed upon the person, at an auction or similar event described in paragraph (1), as authorized by subparagraph (C) of paragraph (1) of subdivision (b) of Section 12071. Within two business days of completion of the application to purchase, the dealer shall forward by prepaid mail to the Department of Justice a report of the same as is indicated in subdivision (c) of Section 12077. If the electronic or telephonic transfer of applicant information is used, within two business days of completion of the application to purchase, the dealer delivering the firearm shall transmit to the Department of Justice an electronic or telephonic report of the same as is indicated in subdivision (c) of Section 12077.

(h) Subdivision (d) of Section 12072 shall not apply to the loan of a firearm for the purposes of shooting at targets if the loan occurs on the premises of a target facility that holds a business or regulatory

license or on the premises of any club or organization organized for the purposes of practicing shooting at targets upon established ranges, whether public or private, if the firearm is at all times kept within the premises of the target range or on the premises of the club or organization.

(i) (1) Subdivision (d) of Section 12072 shall not apply to a person who takes title or possession of a firearm that is not a pistol, revolver, or other firearm capable of being concealed upon the person by operation of law if the person is not prohibited by Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code from possessing firearms.

(2) Subdivision (d) of Section 12072 shall not apply to a person who takes title or possession of a pistol, revolver, or other firearm capable of being concealed upon the person by operation of law if the person is not prohibited by Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code from possessing firearms and all of the following conditions are met:

(A) If the person taking title or possession is neither a levying officer as defined in Section 481.140, 511.060, or 680.210 of the Code of Civil Procedure, nor a person who is receiving that firearm pursuant to subparagraph (G), (I), or (J) of paragraph (2) of subdivision (u), the person shall, within 30 days of taking possession, forward by prepaid mail or deliver in person to the Department of Justice, a report of information concerning the individual taking possession of the firearm, how title or possession was obtained and from whom, and a description of the firearm in question. The reports that individuals complete pursuant to this paragraph shall be provided to them by the department.

(B) If the person taking title or possession is receiving the firearm pursuant to subparagraph (G) of paragraph (2) of subdivision (u), the person shall do both of the following:

(i) Within 30 days of taking possession, forward by prepaid mail or deliver in person to the department, a report of information concerning the individual taking possession of the firearm, how title or possession was obtained and from whom, and a description of the firearm in question. The reports that individuals complete pursuant to this paragraph shall be provided to them by the department.

(ii) Prior to taking possession of the firearm, the person shall either obtain a basic firearms safety certificate or be exempt from obtaining a basic firearms safety certificate pursuant to Section 12081.

(C) Where the person receiving title or possession of the pistol, revolver, or other firearm capable of being concealed upon the person is a person described in subparagraph (I) of paragraph (2) of subdivision (u), on the date that the person is delivered the firearm, the name and other information concerning the person taking possession of the firearm, how title or possession of the firearm was obtained and from whom, and a description of the firearm by make, model, serial number, and other identifying characteristics, shall be

entered into the Automated Firearms System (AFS) via the California Law Enforcement Telecommunications System (CLETS) by the law enforcement or state agency that transferred or delivered the firearm. Those agencies without access to AFS shall arrange with the sheriff of the county in which the agency is located to input this information via this system.

(D) Where the person receiving title or possession of the pistol, revolver, or other firearm capable of being concealed upon the person is a person described in subparagraph (J) of paragraph (2) of subdivision (u), on the date that the person is delivered the firearm, the name and other information concerning the person taking possession of the firearm, how title or possession of the firearm was obtained and from whom, and a description of the firearm by make, model, serial number, and other identifying characteristics, shall be entered into the AFS via the CLETS by the law enforcement or state agency that transferred or delivered the firearm. Those agencies without access to AFS shall arrange with the sheriff of the county in which the agency is located to input this information via this system. In addition, that law enforcement agency shall not deliver that pistol, revolver, or other firearm capable of being concealed upon the person to the person referred to in this subparagraph unless prior to the delivery of the same the person presents proof to the agency that he or she is the holder of a basic firearms safety certificate or is exempt from obtaining a basic firearms safety certificate pursuant to Section 12081.

(3) Subdivision (d) of Section 12072 shall not apply to a person who takes possession of a firearm by operation of law in a representative capacity who subsequently transfers ownership of the firearm to himself or herself in his or her individual capacity. In the case of a pistol, revolver, or other firearm capable of being concealed upon the person, on and after April 1, 1994, that individual shall have a basic firearms safety certificate in order for the exemption set forth in this paragraph to apply.

(j) Subdivision (d) of Section 12072 shall not apply to deliveries, transfers, or returns of firearms made pursuant to Section 12028, 12028.5, or 12030.

(k) Section 12071 and subdivision (c) of Section 12072 shall not apply to any of the following:

(1) The delivery, sale, or transfer of unloaded firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person by a dealer to another dealer upon proof that the person receiving the firearm is licensed pursuant to Section 12071.

(2) The delivery, sale, or transfer of unloaded firearms by dealers to persons who reside outside this state who are licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(3) The delivery, sale, or transfer of unloaded firearms to a wholesaler if the firearms are being returned to the wholesaler and are intended as merchandise in the wholesaler's business.

(4) The delivery, sale, or transfer of unloaded firearms by one dealer to another dealer if the firearms are intended as merchandise in the receiving dealer's business upon proof that the person receiving the firearm is licensed pursuant to Section 12071.

(5) The delivery, sale, or transfer of an unloaded firearm that is not a pistol, revolver, or other firearm capable of being concealed upon the person by a dealer to himself or herself.

(6) The loan of an unloaded firearm by a dealer who also operates a target facility that holds a business or regulatory license on the premises of the building designated in the license or whose building designated in the license is on the premises of any club or organization organized for the purposes of practicing shooting at targets upon established ranges, whether public or private, to a person at that target facility or that club or organization, if the firearm is at all times kept within the premises of the target range or on the premises of the club or organization.

(*l*) A person who is exempt from subdivision (d) of Section 12072 or is otherwise not required by law to report his or her acquisition, ownership, or disposal of a pistol, revolver, or other firearm capable of being concealed upon the person or who moves out of this state with his or her pistol, revolver, or other firearm capable of being concealed upon the person may submit a report of the same to the Department of Justice in a format prescribed by the department.

(m) Subdivision (d) of Section 12072 shall not apply to the delivery, sale, or transfer of unloaded firearms to a wholesaler as merchandise in the wholesaler's business by manufacturers or importers licensed to engage in that business pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto, or by another wholesaler, if the delivery, sale, or transfer is made in accordance with Chapter 44 (commencing with Section 921) of Title 18 of the United States Code.

(n) (1) The waiting period described in Section 12071 or 12072 shall not apply to the delivery, sale, or transfer of a pistol, revolver, or other firearm capable of being concealed upon the person by a dealer in either of the following situations:

(A) The dealer is delivering the firearm to another dealer and it is not intended as merchandise in the receiving dealer's business.

(B) The dealer is delivering the firearm to himself or herself and it is not intended as merchandise in his or her business.

(2) In order for this subdivision to apply, both of the following shall occur:

(A) If the dealer is receiving the firearm from another dealer, the dealer receiving the firearm shall present proof to the dealer

delivering the firearm that he or she is licensed pursuant to Section 12071.

(B) Whether the dealer is delivering, selling, or transferring the firearm to himself or herself or to another dealer, on the date that the application to purchase is completed, the dealer delivering the firearm shall forward by prepaid mail to the Department of Justice a report of the same and the type of information concerning the purchaser or transferee as is indicated in subdivision (b) of Section 12077. Where the electronic or telephonic transfer of applicant information is used, on the date that the application to purchase is completed, the dealer delivering the firearm shall transmit an electronic or telephonic report of the same and the type of information concerning the purchaser or transferee as is indicated in subdivision (b) of Section 12077.

(o) Section 12071 and subdivisions (c) and (d) of Section 12072 shall not apply to the delivery, sale, or transfer of firearms regulated pursuant to Section 12020, Chapter 2 (commencing with Section 12200), or Chapter 2.3 (commencing with Section 12275), if the delivery, sale, or transfer is conducted in accordance with the applicable provisions of Section 12020, Chapter 2 (commencing with Section 12200), or Chapter 2.3 (commencing with Section 12275).

(p) (1) Paragraph (3) of subdivision (a) and subdivision (d) of Section 12072 shall not apply to the loan of a firearm that is not a pistol, revolver, or other firearm capable of being concealed upon the person to a minor, with the express permission of the parent or legal guardian of the minor, if the loan does not exceed 30 days in duration and is for a lawful purpose.

(2) Paragraph (3) of subdivision (a) and subdivision (d) of Section 12072 shall not apply to the loan of a pistol, revolver, or other firearm capable of being concealed upon the person to a minor by a person who is not the parent or legal guardian of the minor if all of the following circumstances exist:

(A) The minor has the written consent of his or her parent or legal guardian that is presented at the time of, or prior to the time of, the loan, or is accompanied by his or her parent or legal guardian at the time the loan is made.

(B) The minor is being loaned the firearm for the purpose of engaging in a lawful, recreational sport, including, but not limited to, competitive shooting, or agricultural, ranching, or hunting activity, or a motion picture, television, or video production, or entertainment or theatrical event, the nature of which involves the use of a firearm.

(C) The duration of the loan does not exceed the amount of time that is reasonably necessary to engage in the lawful, recreational sport, including, but not limited to, competitive shooting, or agricultural, ranching, or hunting activity, or a motion picture, television, or video production, or entertainment or theatrical event, the nature of which involves the use of a firearm.

(D) The duration of the loan does not, in any event, exceed 10 days.

(3) Paragraph (3) of subdivision (a) and subdivision (d) of Section 12072 shall not apply to the loan of a pistol, revolver, or other firearm capable of being concealed upon the person to a minor by his or her parent or legal guardian if both of the following circumstances exist:

(A) The minor is being loaned the firearm for the purposes of engaging in a lawful, recreational sport, including, but not limited to, competitive shooting, or agricultural, ranching, or hunting activity, or a motion picture, television, or video production, or entertainment or theatrical event, the nature of which involves the use of a firearm.

(B) The duration of the loan does not exceed the amount of time that is reasonably necessary to engage in the lawful, recreational sport, including, but not limited to, competitive shooting, or agricultural, ranching, or hunting activity, or a motion picture, television, or video production, or entertainment or theatrical event, the nature of which involves the use of a firearm.

(4) Paragraph (3) of subdivision (a) of Section 12072 shall not apply to the transfer or loan of a firearm that is not a pistol, revolver, or other firearm capable of being concealed upon the person to a minor by his or her parent or legal guardian.

(5) Paragraph (3) of subdivision (a) of Section 12072 shall not apply to the transfer or loan of a firearm that is not a pistol, revolver, or other firearm capable of being concealed upon the person to a minor by his or her grandparent who is not the legal guardian of the minor if the transfer is done with the express permission of the parent or legal guardian of the minor.

(q) Subdivision (d) of Section 12072 shall not apply to the loan of a firearm that is not a pistol, revolver, or other firearm capable of being concealed upon the person to a licensed hunter for use by that licensed hunter for a period of time not to exceed the duration of the hunting season for which that firearm is to be used.

(r) The waiting period described in Section 12071, 12072, or 12084 shall not apply to the delivery, sale, or transfer of a firearm to the holder of a special weapons permit issued by the Department of Justice issued pursuant to Section 12095, 12230, 12250, or 12305. On the date that the application to purchase is completed, the dealer delivering the firearm or the law enforcement agency processing the transaction pursuant to Section 12084, shall forward by prepaid mail to the Department of Justice a report of the same as described in subdivision (b) or (c) of Section 12077 or Section 12084. If the electronic or telephonic transfer of applicant information is used, on the date that the application to purchase is completed, the dealer delivering the firearm shall transmit to the Department of Justice an electronic or telephonic report of the same as is indicated in subdivision (b) or (c) of Section 12077.

(s) Subdivision (d) of Section 12072 shall not apply to the loan of an unloaded firearm or the loan of a firearm loaded with blank

cartridges for use solely as a prop for a motion picture, television, or video production or an entertainment or theatrical event.

(t) (1) The waiting period described in Sections 12071, 12072, and 12084 shall not apply to the sale, delivery, loan, or transfer of a firearm that is a curio or relic, as defined in Section 178.11 of Title 27 of the Code of Federal Regulations, by a dealer or through a law enforcement agency to a person who is licensed as a collector pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto who has a current certificate of eligibility issued to him or her by the Department of Justice pursuant to Section 12071. On the date that the delivery, sale, or transfer is made, the dealer delivering the firearm or the law enforcement agency processing the transaction pursuant to Section 12084, shall forward by prepaid mail to the Department of Justice a report of the transaction pursuant to subdivision (b) of Section 12077 or Section 12084. If the electronic or telephonic transfer of applicant information is used, on the date that the application to purchase is completed, the dealer delivering the firearm shall transmit to the Department of Justice an electronic or telephonic report of the transaction as is indicated in subdivision (b) or (c) of Section 12077.

(2) Subdivision (d) of Section 12072 shall not apply to the infrequent sale, loan, or transfer of a firearm that is not a pistol, revolver, or other firearm capable of being concealed upon the person, which is a curio or relic manufactured at least 50 years prior to the current date, but not including replicas thereof, as defined in Section 178.11 of Title 27 of the Code of Federal Regulations.

(u) As used in this section:

(1) "Infrequent" has the same meaning as in paragraph (1) of subdivision (c) of Section 12070.

(2) "A person taking title or possession of firearms by operation of law" includes, but is not limited to, any of the following instances wherein an individual receives title to, or possession of, firearms:

(A) The executor or administrator of an estate if the estate includes firearms.

(B) A secured creditor or an agent or employee thereof when the firearms are possessed as collateral for, or as a result of, a default under a security agreement under the Commercial Code.

(C) A levying officer, as defined in Section 481.140, 511.060, or 680.260 of the Code of Civil Procedure.

(D) A receiver performing his or her functions as a receiver if the receivership estate includes firearms.

(E) A trustee in bankruptcy performing his or her duties if the bankruptcy estate includes firearms.

(F) An assignee for the benefit of creditors performing his or her functions as an assignee, if the assignment includes firearms.

(G) A transmutation of property consisting of firearms pursuant to Section 850 of the Family Code.

(H) Firearms passing to a surviving spouse pursuant to Chapter 1 (commencing with Section 13500) of Part 2 of Division 8 of the Probate Code.

(I) Firearms received by the family of a police officer or deputy sheriff from a local agency pursuant to Section 50081 of the Government Code.

(J) The transfer of a firearm by a law enforcement agency to the person who found the firearm where the delivery is to the person as the finder of the firearm pursuant to Article 1 (commencing with Section 2080) of Chapter 4 of Division 3 of the Civil Code.

SEC. 10. The sum of five hundred twenty-one thousand dollars ($521,000) is hereby appropriated from the General Fund to the Department of Justice for costs associated with the requirements of Section 3 of this bill, to be allocated as follows:

(a) One hundred seventy-four thousand dollars ($174,000) for the 1998–99 fiscal year.

(b) Three hundred forty-seven thousand dollars ($347,000) for the 1999–2000 fiscal year.

SEC. 11. Section 6.5 of this bill incorporates amendments to Section 12070 of the Penal Code proposed by both this bill and SB 63. 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 12070 of the Penal Code and (3) this bill is enacted after SB 63, in which case Section 12070 of the Penal Code, as amended by Section 6 of this bill, shall remain operative only until the operative date of SB 63, at which time Section 6.5 of this bill shall become operative.

SEC. 12. Section 7.5 of this bill incorporates amendments to Section 12072 of the Penal Code proposed by both this bill and SB 63. 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 12072 of the Penal Code, and (3) this bill is enacted after SB 63, in which case Section 12072 of the Penal Code, as amended by Section 7 of this bill, shall remain operative only until the operative date of SB 63, at which time Section 7.5 of this bill shall become operative.

SEC. 13. Section 9.5 of this bill incorporates amendments to Section 12078 of the Penal Code proposed by both this bill and SB 63. 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 12078 of the Penal Code, and (3) this bill is enacted after SB 63, in which case Section 12078 of the Penal Code, as amended by Section 9 of this bill, shall remain operative only until the operative date of SB 63, at which time Section 9.5 of this bill shall become operative.

SEC. 14. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within

the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to conform state firearm reporting requirements with changes in federal law becoming effective on November 30, 1998, it is necessary that this bill take effect immediately.

SEC. 15. This bill shall become operative on November 30, 1998.

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 912

An act to amend, repeal, and add Section 58889 of the Food and Agricultural Code, relating to agriculture.

[Approved by Governor September 27, 1998. Filed with Secretary of State September 28, 1998.]

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

SECTION 1. Section 58889 of the Food and Agricultural Code is amended to read:

58889. (a) A marketing order may contain provisions for the establishment of plans for advertising and sales promotion to maintain present markets or to create new or larger markets for any commodity that is grown in this state, or for the prevention, modification, or removal of trade barriers that obstruct the free flow of any commodity to market. The secretary may prepare, issue, administer, and enforce plans for promoting the sale of any commodity.

(b) Any such plan shall be directed toward increasing the sale of the commodity without reference to any private brand or trade name that is used by any handler with respect to the commodity regulated by the marketing order, except the use of wine if other than private brands or private trade names are unavailable, and except that marketing orders that provide for the advertising and sales promotion of raisins, prunes, and walnuts may allow those plans to credit the pro rata assessment obligations of a handler with all or any

portion of that handler's direct expenditures for the marketing promotion that may include private brand or trade name advertising performance allowances, sales promotions, couponing, and in-store promotion programs and materials.

(c) (1) Notwithstanding any provision of this section, any marketing order for fluid milk may contain in its advertising and sales promotion plan provisions to allocate funds for promotions of cheese or butter products made with California milk, including promotions in which brand or trade names are used, but only if the use is incidental to the promotion of the California milk product and not in direct promotion of the brand or trade name, and if the allocation of funds is made available on a nondiscriminatory basis to all retailers and manufacturers of butter or cheese utilizing milk produced in California. Permissible private brand or trade name marketing promotions may include advertising, performance allowances, sales promotions, couponing subject to Section 61375 and in-store promotion programs and materials, and other marketing communication tools.

(2) For purposes of this subdivision, "butter" means the product made by gathering the fat of fresh or ripened milk or cream into a mass, which also contains a small portion of other milk constituents.

(3) This subdivision shall not become operative unless approved as set forth in subdivision (c) of Section 58993.

(d) No advertising or sales promotion program shall be issued by the secretary that makes use of false or unwarranted claims in behalf of any such product, or disparages the quality, value, sale, or use of any other commodity.

(e) (1) Notwithstanding Section 7550.5 of the Government Code, the department shall report regarding the effectiveness of the promotion specified in subdivision (c) and whether that promotion was made available to all manufacturers on a nondiscriminatory basis. The department shall also make a recommendation in the report regarding whether the program should be continued, expanded, or eliminated. This report shall be delivered to the Governor, the Senate Committee on Agriculture and Water Resources, and the Assembly Committee on Agriculture not later than December 31, 2001.

(2) This subdivision shall not become operative unless subdivision (c) becomes operative.

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

SEC. 2. Section 58889 is added to the Food and Agricultural Code, to read:

58889. (a) A marketing order may contain provisions for the establishment of plans for advertising and sales promotion to maintain present markets or to create new or larger markets for any commodity that is grown in this state, or for the prevention,

modification, or removal of trade barriers that obstruct the free flow of any commodity to market. The director may prepare, issue, administer, and enforce plans for promoting the sale of any commodity.

(b) Any such plan shall be directed toward increasing the sale of the commodity without reference to any private brand or trade name that is used by any handler with respect to the commodity regulated by the marketing order, except the use of wine if other than private brands or private trade names are unavailable, and except that such marketing orders that provide for the advertising and sales promotion of raisins, prunes, and walnuts may allow those plans to credit the pro rata assessment obligations of a handler with all or any portion of that handler's direct expenditures for the marketing promotion, which may include private brand or trade name advertising performance allowances, sales promotions, couponing, and in-store promotion programs and materials.

(c) No advertising or sales promotion program shall be issued by the director that makes use of false or unwarranted claims on behalf of any such product, or disparages the quality, value, sale, or use of any other commodity.

(d) This section shall become operative on January 1, 2003.

CHAPTER 913

An act to amend Sections 316, 340, 1000, 1001, 1201, 1202, 6020, 6041, 6061, 6084, 6086, 6122, 6180, 6320, 6323, 6340, 6343, 6520, 6523, 6540, 6543, 6568, 6721, 6722, 6725, 6740, 6742, 6743, 6787, and 6952 of the Elections Code, relating to presidential primaries.

[Approved by Governor September 28, 1998. Filed with Secretary of State September 28, 1998.]

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

SECTION 1. The Legislature finds and declares that in order to improve public confidence in government at the local, state, and federal levels, every effort must be made to arrest the significant decline in voter participation that has occurred in the past decade, and that holding both the presidential primary and the direct primary elections on the same day will help to maximize voter participation in the electoral process and increase public confidence in these various levels of government.

By moving the California presidential primary date to the first Tuesday in March pursuant to this act, it is the intent of the Legislature to encourage a regional presidential primary for the western states.

SEC. 2. Section 316 of the Elections Code is amended to read:

316. "Direct primary" is the primary election held on the first Tuesday in March in each even-numbered year, to nominate candidates to be voted for at the ensuing general election or to elect members of a party central committee.

SEC. 3. Section 340 of the Elections Code is amended to read:

340. "Presidential primary" is the primary election that is held on the first Tuesday in March in any year which is evenly divisible by the number four, and at which delegations to national party conventions are to be chosen.

SEC. 4. Section 1000 of the Elections Code is amended to read:

1000. The established election dates in each year are as follows:

(a) The second Tuesday of April in each even-numbered year.

(b) The first Tuesday after the first Monday in March of each odd-numbered year.

(c) The first Tuesday in March in each even-numbered year.

(d) The first Tuesday after the first Monday in November of each year.

SEC. 5. Section 1001 of the Elections Code is amended to read:

1001. Elections held in March and November of each even-numbered year are statewide elections and these dates are statewide election dates.

SEC. 6. Section 1201 of the Elections Code is amended to read:

1201. (a) The statewide direct primary shall be held on the first Tuesday in March of each even-numbered year.

(b) Notwithstanding subdivision (a), in any year which is evenly divisible by the number four, the statewide direct primary shall be held on the first Tuesday in March and shall be consolidated with the presidential primary held in that year.

SEC. 7. Section 1202 of the Elections Code is amended to read:

1202. The presidential primary shall be held on the first Tuesday in March in any year evenly divisible by the number four.

SEC. 8. Section 6020 of the Elections Code is amended to read:

6020. (a) The Chairperson of the Democratic State Central Committee shall notify the Secretary of State on or before the 120th day preceding the presidential primary as to the number of delegates and alternates to represent the state in the next national convention of the Democratic Party.

(b) The chairperson shall notify each statewide-elected officeholder, each Member of the Legislature, each United States Senator from California, and each Member of the House of Representatives from California who is affiliated with the Democratic Party as to the officeholder's right to serve as a pledged elected official delegate to the Democratic National Convention.

(c) The chairperson shall also notify the Secretary of State at the time prescribed in subdivision (a) as to the number of delegates which may be selected from each congressional district in connection with the presidential primary. The number of delegates which may be selected from each congressional district shall be based on a

formula which apportions 75 percent of the state's base delegation allocated by the Democratic National Committee, among the congressional districts in a manner which gives equal weight to the vote for the Democratic candidates in the most recent presidential and gubernatorial elections.

The number of delegates allocated to each congressional district shall be rounded off to the nearest whole integer. The remaining delegates and alternates shall be selected pursuant to Article 11 (commencing with Section 6200).

(d) Delegates and alternate delegates apportioned to each congressional district shall be selected based on the proportion of the vote a presidential candidate or uncommitted delegation receives within the congressional district pursuant to Section 6200.

SEC. 9. Section 6041 of the Elections Code is amended to read:

6041. The Secretary of State shall place the name of a candidate upon the presidential primary ballot when he or she has determined that the candidate is generally advocated for or recognized throughout the United States or California as actively seeking the nomination of the Democratic Party for President of the United States. The Secretary of State shall include as criteria for selecting candidates the fact of qualifying for funding under the Federal Elections Campaign Act, as amended in 1974.

Between the 150th day and the 120th day preceding a presidential primary election, the Secretary of State shall publicly announce and distribute to the news media for publication a list of the selected candidates that he or she intends to place on the ballot at the following presidential primary election. Following this announcement the Secretary of State may add candidates to the selection, but he or she may not delete any presidential candidate whose name appears on the announced list except as provided in Section 6043.

SEC. 10. Section 6061 of the Elections Code is amended to read:

6061. Any unselected candidate or uncommitted delegation desiring to be placed on the presidential primary ballot shall have nomination papers circulated on behalf of the candidacy. In order to qualify for placement on the presidential primary ballot, the candidate's or uncommitted delegation's nomination papers shall be signed by voters registered as affiliated with the Democratic Party equal in number to not less than 1 percent or 500, whichever is fewer, in each congressional district of the number of persons registered as members of the Democratic Party in the report of registration issued by the Secretary of State on the 135th day preceding the presidential primary election.

The unselected candidates or uncommitted delegations shall meet the statewide signature requirements from each congressional district in order to be eligible for placement on the ballot in any one congressional district.

SEC. 11. Section 6084 of the Elections Code is amended to read:

6084. On or before the 50th day preceding the presidential primary, the Democratic State Central Committee shall transmit to the steering committee of each presidential candidate and uncommitted delegation, a list of all persons who have filed a declaration of candidate for delegate pledged to that presidential candidate or uncommitted delegation.

SEC. 12. Section 6086 of the Elections Code is amended to read:

6086. On or before the 40th day preceding the presidential primary election, at 3 p.m., the caucus chairperson in each congressional district shall convene a caucus for the purpose of electing potential delegates and alternate delegates. The steering committee of each candidate or uncommitted delegation shall have sole authority to establish rules and procedures, including the naming of caucus chairpersons, by which the caucuses of that candidate or uncommitted delegation shall be conducted. The rules and procedures shall be uniform statewide, and in compliance with the Democratic State Central Committee's delegate selection and affirmative action plan. Each caucus shall elect a slate of delegate nominees in each congressional district pursuant to Article 2 (commencing with Section 6020), ranked in the manner specified by this section. The slate shall be transmitted to the steering committee of each candidate and uncommitted delegation.

Each participant at each caucus shall reside in, and be a registered Democrat of, the congressional district of the caucus he or she attends and each shall sign a statement of support for that presidential candidate or uncommitted delegation. Within five days after the convening of the caucus, the steering committee of each candidate or uncommitted delegation shall rank the delegate candidates from the slate of delegate candidates provided by each caucus. The delegate candidate receiving the greatest number of votes shall be ranked as the first delegate candidate. The delegate candidate of the opposite sex as the first ranked delegate candidate receiving the greatest number of votes shall be ranked as the second delegate candidate. The remaining delegate candidates to be ranked shall continue to be alternated between sexes in the order of vote totals. Immediately thereafter, the chairperson of a steering committee shall file with the Secretary of State a statement containing the names of delegate candidates in ranked order from each congressional district. In all cases, the slate for each congressional district shall be equal to the number of delegates and alternate delegates allotted to each congressional district pursuant to Section 6023.

SEC. 13. Section 6122 of the Elections Code is amended to read:

6122. Circulators may obtain signatures to the nomination paper for which they were appointed at any time between the period of 120 days and 75 days, inclusive, prior to the presidential primary election.

SEC. 14. Section 6180 of the Elections Code is amended to read:

6180. At least 59 days before a presidential primary election, the Secretary of State shall transmit to each county elections official a

certified list containing the name of each candidate who is entitled to be voted for on the ballot at the presidential primary, and the name of each chairperson of a steering committee of an uncommitted delegation who is to be voted for on the same ballot.

If no uncommitted delegation has qualified pursuant to Article 4 (commencing with Section 6060), the Secretary of State shall inform the county elections officials to provide for an uncommitted delegate space on the ballot.

The certified list shall be in substantially the following form:

Certified List of Presidential Candidates and Uncommitted Delegations

To the County Elections Official of _____ County:

I, _____, Secretary of State, do hereby certify that the following list contains the name of each person who is entitled to be voted for as a candidate of the Democratic Party at the presidential primary election to be held on the _____ day of March, 20____, and the name of each chairperson of a steering committee of an uncommitted delegation which is entitled to be voted for on the ballot.

List of Presidential Candidates and Uncommitted Delegations

Linda Adams
Joseph Black
John Reardon
Unpledged delegation
Paul Minor,
Chairperson

Dated at Sacramento, California, this _____ day of _____, 20____.

_____

(SEAL) Secretary of State

SEC. 15. Section 6320 of the Elections Code is amended to read:

6320. The chairperson of the state central committee shall notify the Secretary of State on or before the 120th day preceding the presidential primary as to the number of delegates to represent the state in the next national convention of his or her party.

SEC. 16. Section 6323 of the Elections Code is amended to read:

6323. The Secretary of State shall, on or before the 110th day preceding the presidential primary, certify to the county elections official of each county the number of delegates to be elected by the Republican Party.

SEC. 17. Section 6340 of the Elections Code is amended to read:

6340. The Secretary of State shall place the name of a candidate upon the Republican presidential primary ballot when the Secretary of State has determined that the candidate is generally recognized throughout the United States or California as a candidate for the nomination of the Republican Party for President of the United States.

On or before the 120th day preceding a presidential primary election the Secretary of State shall publicly announce and distribute to the news media for publication a list of the candidates he or she intends to place on the ballot at the following presidential primary election. Following this announcement he or she may add candidates to his or her selection, but he or she may not delete any candidate whose name appears on the announced list.

SEC. 18. Section 6343 of the Elections Code is amended to read:

6343. Any unselected candidate desiring to have his or her name placed on the presidential primary ballot shall have nomination papers circulated in his or her behalf. In order to qualify his or her name for placement on the presidential primary ballot, the candidate's nomination papers shall be signed by voters registered as affiliated with the Republican Party equal in number to not less than 1 percent of the number of persons registered as members of the Republican Party, as reflected in the report of registration issued by the Secretary of State on the 135th day preceding the presidential primary election.

SEC. 19. Section 6520 of the Elections Code is amended to read:

6520. The Secretary of State shall place the name of a candidate upon the American Independent Party presidential preference ballot when the Secretary of State has determined that the candidate is generally advocated for or recognized in the news media throughout the United States or California as actively seeking the nomination of the American Independent Party for President of the United States.

On or before the 120th day preceding a presidential primary election, the Secretary of State shall publicly announce and distribute to the news media for publication a list of the candidates he or she intends to place on the ballot at the following presidential primary election. Following this announcement he or she may add candidates to his or her selection, but he or she may not delete any candidate whose name appears on the announced list.

SEC. 20. Section 6523 of the Elections Code is amended to read:

6523. Any unselected candidate desiring to have his or her name placed on the presidential preference primary ballot without filing a group of candidates for delegates, shall have nomination papers circulated in his or her behalf. In order to qualify his or her name for placement on the presidential preference primary ballot, the candidate's nomination papers shall be signed by voters registered as affiliated with the American Independent Party equal in number to not less than 1 percent of the number of persons registered as

members of the American Independent Party as reflected in the report of registration issued by the Secretary of State on the 135th day preceding the presidential primary election.

SEC. 21. Section 6540 of the Elections Code is amended to read:

6540. The Chairperson of the State Central Committee of the American Independent Party shall notify the Secretary of State on or before the 120th day preceding the presidential primary as to the number of delegates to represent the state in the next national convention of his or her party.

SEC. 22. Section 6543 of the Elections Code is amended to read:

6543. The Secretary of State shall, on or before the 110th day preceding the presidential primary, certify to the county elections official of each county the number of delegates to be elected by the American Independent Party.

SEC. 23. Section 6568 of the Elections Code is amended to read:

6568. Nomination papers for candidates for delegates shall be signed by voters registered as affiliated with the American Independent Party equal in number to not less than 1 percent of the number of persons registered as members of the American Independent Party as reflected in the report of registration issued by the Secretary of State on the 135th day preceding the presidential primary election.

SEC. 24. Section 6721 of the Elections Code is amended to read:

6721. On or before the 150th day preceding a presidential primary election, the Secretary of State shall send a letter by first-class mail to the Chairpersons of record of the Peace and Freedom Party State and County Central Committees, informing them that, while a response is not required, any information they wish to submit will be considered by the Secretary of State in the determination of candidates to be placed on the Peace and Freedom Party presidential preference primary ballot pursuant to Section 6720.

SEC. 25. Section 6722 of the Elections Code is amended to read:

6722. On or before the 120th day preceding a presidential primary election, the Secretary of State shall publicly announce and distribute to the news media for publication a list of the candidates she or he intends to place on the ballot at the following presidential primary election. Following this announcement, the Secretary of State may add to her or his selection, but she or he may not delete any candidate whose name appears on the announced list. The Secretary of State shall mail a copy of the list and any subsequent additions thereto to the Chairpersons of the Peace and Freedom Party State and County Central Committees.

SEC. 26. Section 6725 of the Elections Code is amended to read:

6725. Any unselected candidate desiring to have her or his name placed on the presidential preference primary ballot without filing a group of candidates for delegates, shall have nomination papers circulated on her or his behalf. In order to qualify the name of that

candidate for placement on the presidential preference primary ballot, the nomination papers of the candidate shall be signed by voters registered as affiliated with the Peace and Freedom Party equal in number to not less than 1 percent of the number of persons registered as members of the Peace and Freedom Party as reflected in the report of registration issued by the Secretary of State on the 135th day preceding the presidential primary election.

SEC. 27. Section 6740 of the Elections Code is amended to read:

6740. The Chairperson of the Peace and Freedom Party State Central Committee shall notify the Secretary of State on or before the 120th day preceding the presidential primary as to both of the following:

(a) The name of that national party with which the Peace and Freedom Party has affiliated, by vote of its state central committee, and the address and telephone number of the principal office of that national party.

(b) The number of delegates to represent the Peace and Freedom Party of California at the next national convention of that national party.

SEC. 28. Section 6742 of the Elections Code is amended to read:

6742. If the Chairperson of the Peace and Freedom Party State Central Committee fails to file the notice required by Section 6741 by the 120th day preceding the presidential primary, the Secretary of State shall ascertain the national affiliation of the party and the number of delegates from the chairperson or any other officer of record of the party state central committee or from the national party with which the Peace and Freedom Party was affiliated as indicated by the most recent statement of the affiliation on file by the chairperson of the party state central committee.

SEC. 29. Section 6743 of the Elections Code is amended to read:

6743. On or before the 110th day before the presidential primary, the Secretary of State shall certify all of the following to the elections official of each county:

(a) The name of that national party with which the Peace and Freedom Party is presently affiliated and the address and telephone number of the principal office of that national party.

(b) The number of delegates to represent the Peace and Freedom Party of California in the next national convention of that national party.

(c) The number of delegate candidates to be selected from each territory pursuant to Sections 6744 and 6745 by each committee proposing a group of national convention delegates.

SEC. 30. Section 6787 of the Elections Code is amended to read:

6787. The nomination paper for a group of candidates for delegates to the national convention shall be in substantially the following form:

SECTION OF NOMINATION PAPER SIGNED BY VOTER ON BEHALF OF GROUP OF CANDIDATES FOR DELEGATES TO NATIONAL CONVENTION

Section _____ Page _____
County of _____.

Nomination paper of group of candidates for election as delegates by the Peace and Freedom Party pledged to the candidacy of _____ as presidential nominee, or expressing no preference, as the case may be.

State of California }
County of _____ } ss.

SIGNER'S STATEMENT

I, the undersigned, am a voter of the County of _____, State of California, and am registered as affiliated with the Peace and Freedom Party. I hereby nominate the following:

Number	Names	Residence city or town	County
1.			
2.			
3.			
etc.			

(to the number as may be required) as candidates for delegate to the national convention of the _____ Party, with which the Peace and Freedom Party of California is affiliated on the national level, to be voted for at the presidential primary to be held on the _____ day of March, 20____. I have not signed the nomination paper of any other group of candidates for delegates to the national convention or of any candidate for the presidential preference portion of the primary ballot.

Number	Signature	Printed name	Residence street address /city
1.			
2.			
3.			
etc.			

CIRCULATOR'S DECLARATION

I, _____, affirm that I am a voter registered as affiliated with the Peace and Freedom Party in _____ County, that I have been appointed as a circulator to secure signatures in the County of _____ to the nomination paper of the group of candidates named in the signer's statement above as candidates for nomination and election by the Peace and Freedom Party as delegates to represent the Peace and Freedom Party of California in the _____ Party's next national convention, that all the signatures on this section of the nomination paper numbered from 1 to _____, inclusive, were made in my presence, that the signatures were obtained between _____ 20____, and _____ 20____, and that to the best of my knowledge and belief each signature is the genuine signature of the person whose name it purports to be.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at _____, California, this _____ day of _____, 20____.

(Signed)_____
Circulator

(Printed name)_____

SEC. 31. Section 6952 of the Elections Code is amended to read:

6952. The certified list required by Section 6951 shall be in substantially the following form:

CERTIFIED LIST OF CANDIDATES FOR PRESIDENTIAL PREFERENCE PRIMARY AND CANDIDATES FOR NATIONAL CONVENTION DELEGATE

To the County Elections Official of _____ County:

I, _____, Secretary of State, do hereby certify that the names of the candidates to appear on the March _____, 20____, Peace and Freedom Party presidential preference primary ballot, in the order in which they are to appear, are:

_____	_____
_____	_____
etc.	etc.

I further certify that the following list contains the name and post office address of each person who is entitled to be voted for at the March _____, 20____, Peace and Freedom Party presidential primary election as a candidate for delegate to the next national convention of the _____ Party with which the Peace and Freedom Party of California is affiliated on the national level. I further certify that the groups of candidates for delegate each appear under the name of the person for whom the group has expressed a preference as nominee of the Peace and Freedom Party for President, or under the name of the group chairperson in case of a group not expressing a preference, and that the groups are listed in the order in which they are to appear on the national convention delegate portion of the Peace and Freedom Party presidential primary ballot.

LIST OF CANDIDATES FOR NATIONAL CONVENTION DELEGATE

PEACE AND FREEDOM PARTY

Candidates preferring _____	
Name	Address
Top of group	
1 _____	_____
2 _____	_____
3 _____	_____
etc.	etc.

Candidates expressing
no preference
(Name of chairperson)

_____

Name	Address
Top of group	
1 _____	_____
2 _____	_____
3 _____	_____
etc.	etc.

Dated at Sacramento, California, this _____ day of _____, 20____.

_____

(SEAL) Secretary of State

CHAPTER 914

An act to amend Sections 200, 211, 212, 212.5, 213, 214, 220, 223, 224, 250, 251, 253, 262.3, and 72012 of, to amend the headings of Chapter 2 (commencing with Section 200) of, and Article 3 (commencing with Section 220) of, Chapter 2 of Part 1 of, to amend and renumber Sections 40, 41, 45, 210, 212.6, 222, 226, 227, 228, 232, 262, 262.1, 262.2, 263, 33032.5, 44806, 52905, 52906, 52907, 52908, 58508, and 72015 of, to amend and renumber the headings of Article 4 (commencing with Section 240) of, Article 5 (commencing with Section 250) of, and Article 6 (commencing with Section 260) of, Chapter 2 of Part 1 of, to add Sections 210, 262.4, and 264 to, to add the headings of Article 4 (commencing with Section 221.5) of, Article 5 (commencing with Section 233) of, Article 6 (commencing with Section 235) of, and Article 11 (commencing with Section 280) of, Chapter 2 of Part 1 of, and to add Chapter 4.5 (commencing with Section 66250) to Part 40 of, and to repeal the headings of Article 4 (commencing with Section 40) of, and Article 4.5 (commencing with Section 45) of, Chapter 1 of Part 1 of, and Article 8 (commencing with Section 52905) of Chapter 12 of Part 28 of, the Education Code, relating to education.

[Approved by Governor September 28, 1998. Filed with Secretary of State September 28, 1998.]

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

SECTION 1. The heading of Article 4 (commencing with Section 40) of Chapter 1 of Part 1 of the Education Code is repealed.

SEC. 2. Section 40 of the Education Code is amended and renumbered to read:

221.5. (a) It is the policy of the state that elementary and secondary school classes and courses, including nonacademic and elective classes and courses, be conducted, without regard to the sex of the pupil enrolled in these classes and courses.

(b) No school district shall prohibit any pupil from enrolling in any class or course on the basis of the sex of the pupil, except a class subject to Section 51550.

(c) No school district shall require pupils of one sex to enroll in a particular class or course, unless the same class or course is also required of pupils of the opposite sex.

(d) No school counselor, teacher, instructor, administrator, or aide shall, on the basis of the sex of a pupil, offer vocational or school program guidance to pupils of one sex that is different from that offered to pupils of the opposite sex or, in counseling pupils, differentiate career, vocational, or higher education opportunities on the basis of the sex of the pupil counseled. Any school personnel acting in a career counseling or course selection capacity to any pupil shall affirmatively explore with the pupil the possibility of careers, or courses leading to careers, that are nontraditional for that pupil's sex. The parents or legal guardian of the pupil shall be notified in a general manner at least once in the manner prescribed by Section 48980, in advance of career counseling and course selection commencing with course selection for grade 7 so that they may participate in the counseling sessions and decisions.

(e) Participation in a particular physical education activity or sport, if required of pupils of one sex, shall be available to pupils of each sex.

SEC. 3. Section 41 of the Education Code is amended and renumbered to read:

221.7. (a) The Legislature finds and declares that female pupils are not accorded opportunities for participation in school-sponsored athletic programs equal to those accorded male pupils. It is the intent of the Legislature that opportunities for participation in athletics be provided equally to male and female pupils.

(b) Notwithstanding any other provisions of law, no public funds shall be used in connection with any athletic program conducted under the auspices of a school district governing board or any student organization within the district, which does not provide equal opportunity to both sexes for participation and for use of facilities. Facilities and participation include, but are not limited to, equipment and supplies, scheduling of games and practice time, compensation

for coaches, travel arrangements, per diem, locker rooms, and medical services.

(c) Nothing in this section shall be construed to require a school district to require competition between male and female pupils in school-sponsored athletic programs.

SEC. 4. The heading of Article 4.5 (commencing with Section 45) of Chapter 1 of Part 1 of the Education Code is repealed.

SEC. 5. Section 45 of the Education Code is amended and renumbered to read:

201. (a) All pupils have the right to participate fully in the educational process, free from discrimination and harassment.

(b) California's public schools have an affirmative obligation to combat racism, sexism, and other forms of bias, and a responsibility to provide equal educational opportunity.

(c) Harassment on school grounds directed at an individual on the basis of personal characteristics or status creates a hostile environment and jeopardizes equal educational opportunity as guaranteed by the California Constitution and the United States Constitution.

(d) There is an urgent need to prevent and respond to acts of hate violence and bias-related incidents that are occurring at an increasing rate in California's public schools.

(e) There is an urgent need to teach and inform pupils in the public schools about their rights, as guaranteed by the federal and state constitutions, in order to increase pupils' awareness and understanding of their rights and the rights of others, with the intention of promoting tolerance and sensitivity in public schools and in society as a means of responding to potential harassment and hate violence.

(f) It is the intent of the Legislature that each public school undertake educational activities to counter discriminatory incidents on school grounds and, within constitutional bounds, to minimize and eliminate a hostile environment on school grounds that impairs the access of pupils to equal educational opportunity.

(g) It is the intent of the Legislature that this chapter shall be interpreted as consistent with Article 9.5 (commencing with Section 11135) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code, Title VI of the federal Civil Rights Act of 1964 (42 U.S.C. Sec. 1981, et seq.), Title IX of the Education Amendments of 1972 (20 U.S.C. Sec. 1681, et seq.), Section 504 of the federal Rehabilitation Act of 1973 (29 U.S.C. Sec. 794(a)), the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.), the federal Equal Educational Opportunities Act (20 U.S.C. Sec. 1701, et seq.), the Unruh Civil Rights Act (Secs. 51 to 53, incl., Civ. C.), and the Fair Employment and Housing Act (Pt. 2.8 (commencing with Sec. 12900), Div. 3, Gov. C.), except where this chapter may grant more protections or impose additional obligations, and that the remedies provided herein shall not be the exclusive

remedies, but may be combined with remedies that may be provided by the above statutes.

SEC. 6. The heading of Chapter 2 (commencing with Section 200) of Part 1 of the Education Code is amended to read:

CHAPTER 2. EDUCATIONAL EQUITY

SEC. 7. Section 200 of the Education Code is amended to read:

200. (a) It is the policy of the State of California to afford all persons in public schools, regardless of their sex, ethnic group identification, race, national origin, religion, or mental or physical disability, equal rights and opportunities in the educational institutions of the state. The purpose of this chapter is to prohibit acts which are contrary to that policy and to provide remedies therefor.

SEC. 8. Section 210 is added to the Education Code, to read:

210. The definitions in this article shall govern the use of the terms defined for purposes of this chapter.

SEC. 9. Section 210 of the Education Code is amended and renumbered to read:

210.1. "Educational institution" means a public or private preschool, elementary, or secondary school or institution; the governing board of a school district; or any combination of school districts or counties recognized as the administrative agency for public elementary or secondary schools.

SEC. 10. Section 211 of the Education Code is amended to read:

211. "Governing board" means the governing board of a school district.

SEC. 11. Section 212 of the Education Code is amended to read:

212. "Sex" means the biological condition or quality of being a male or female human being.

SEC. 12. Section 212.5 of the Education Code is amended to read:

212.5. "Sexual harassment" means unwelcome sexual advances, requests for sexual favors, and other verbal, visual, or physical conduct of a sexual nature, made by someone from or in the work or educational setting, under any of the following conditions:

(a) Submission to the conduct is explicitly or implicitly made a term or a condition of an individual's employment, academic status, or progress.

(b) Submission to, or rejection of, the conduct by the individual is used as the basis of employment or academic decisions affecting the individual.

(c) The conduct has the purpose or effect of having a negative impact upon the individual's work or academic performance, or of creating an intimidating, hostile, or offensive work or educational environment.

(d) Submission to, or rejection of, the conduct by the individual is used as the basis for any decision affecting the individual regarding

benefits and services, honors, programs, or activities available at or through the educational institution.

SEC. 13. Section 212.6 of the Education Code is amended and renumbered to read:

231.5. (a) It is the policy of the State of California, pursuant to Section 200, that all persons, regardless of their sex, should enjoy freedom from discrimination of any kind in the educational institutions of the state. The purpose of this section is to provide notification of the prohibition against sexual harassment as a form of sexual discrimination and to provide notification of available remedies.

(b) Each educational institution in the State of California shall have a written policy on sexual harassment. It is the intent of the Legislature that each educational institution in this state include this policy in its regular policy statement rather than distribute an additional written document.

(c) The educational institution's written policy on sexual harassment shall include information on where to obtain the specific rules and procedures for reporting charges of sexual harassment and for pursuing available remedies.

(d) A copy of the educational institution's written policy on sexual harassment shall be displayed in a prominent location in the main administrative building or other area of the campus or schoolsite. "Prominent location" means that location, or those locations, in the main administrative building or other area where notices regarding the institution's rules, regulations, procedures, and standards of conduct are posted.

(e) A copy of the educational institution's written policy on sexual harassment, as it pertains to students, shall be provided as part of any orientation program conducted for new students at the beginning of each quarter, semester, or summer session, as applicable.

(f) A copy of the educational institution's written policy on sexual harassment shall be provided for each faculty member, all members of the administrative staff, and all members of the support staff at the beginning of the first quarter or semester of the school year, or at the time that there is a new employee hired.

(g) A copy of the educational institution's written policy on sexual harassment shall appear in any publication of the institution that sets forth the comprehensive rules, regulations, procedures, and standards of conduct for the institution.

SEC. 14. Section 213 of the Education Code is amended to read:

213. (a) "State financial assistance" means any funds or other form of financial aid appropriated or authorized pursuant to state law, or pursuant to federal law administered by any state agency, for the purpose of providing assistance to any educational institution for its own benefit or for the benefit of any pupils admitted to the educational institution.

(b) State financial assistance shall include, but not be limited to, all of the following:

(1) Grants of state property, or any interest therein.

(2) Provision of the services of state personnel.

(3) Funds provided by contract, tax rebate, appropriation, allocation, or formula.

SEC. 15. Section 214 of the Education Code is amended to read:

214. "State student financial aid" means any funds or other form of financial aid appropriated or authorized pursuant to state law, or pursuant to federal law administered by any state agency, for the purpose of providing assistance directly to any student admitted to an educational institution. State student financial aid shall include, but not be limited to, scholarships, loans, grants, or wages.

SEC. 16. The heading of Article 3 (commencing with Section 220) of Chapter 2 of Part 1 of the Education Code is amended to read:

Article 3. Prohibition of Discrimination

SEC. 17. Section 220 of the Education Code is amended to read:

220. No person shall be subjected to discrimination on the basis of sex, ethnic group identification, race, national origin, religion, color, or mental or physical disability in any program or activity conducted by an educational institution that receives, or benefits from, state financial assistance or enrolls pupils who receive state student financial aid.

SEC. 18. The heading of Article 4 (commencing with Section 221.5) is added to Chapter 2 of Part 1 of the Education Code, to read:

Article 4. Sex Equity in Education Act

SEC. 19. Section 222 of the Education Code is amended and renumbered to read:

66272. This article shall not apply to an educational institution whose primary purpose is the training of individuals for the military services of the United States, or the merchant marine.

SEC. 20. Section 223 of the Education Code is amended to read:

223. This chapter shall not apply to the membership practices of the Young Men's Christian Association, Young Women's Christian Association, girl scouts, boy scouts, Camp Fire, or voluntary youth service organizations which are exempt from taxation under subdivision (a) of Section 501 of the federal Internal Revenue Code of 1954, whose membership has traditionally been limited to persons of one sex, and principally to persons of less than 19 years of age.

SEC. 21. Section 224 of the Education Code is amended to read:

224. The sex discrimination provisions of this article shall not apply to any of the following, provided that these conferences comply with other nondiscrimination provisions of state and federal law:

(a) Any program or activity of the American Legion undertaken in connection with the organization or operation of any Boys State conference, Boys Nation conference, Girls State conference, or Girls Nation conference.

(b) Any program or activity of any secondary educational institution specifically for any of the following purposes:

(1) The promotion of any Boys State conference, Boys Nation conference, Girls State conference, or Girls Nation conference.

(2) The selection of students to attend any of those conferences.

SEC. 22. Section 226 of the Education Code is amended and renumbered to read:

66276. This article shall not apply to any scholarship or other financial assistance awarded by a postsecondary educational institution to any individual upon the basis of a combination of factors related to the individual's personal appearance, poise, and talent as an award in any pageant in which participation is limited exclusively to individuals of one sex, provided that the pageant complies with other nondiscrimination provisions of state and federal law.

SEC. 23. Section 227 of the Education Code is amended and renumbered to read:

66277. In regard to admissions to educational institutions, this article shall apply only to institutions of vocational, professional, or postgraduate education, and to public postsecondary education institutions.

SEC. 24. Section 228 of the Education Code is amended and renumbered to read:

66278. In regard to admissions to educational institutions, this article shall not apply to any public institution of undergraduate higher education which traditionally and continually from its establishment has had a policy of admitting only students of one sex.

SEC. 25. Section 232 of the Education Code, as amended by Section 5 of Chapter 938 of the Statutes of 1995, is amended and renumbered to read:

221.1. The State Board of Education shall adopt regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, commonly referred to as the rulemaking provisions of the Administrative Procedure Act, to implement this chapter.

SEC. 26. The heading of Article 5 (commencing with Section 233) is added to Chapter 2 of Part 1 of the Education Code, to read:

Article 5. Hate Violence Prevention Act

SEC. 27. The heading of Article 6 (commencing with Section 235) is added to Chapter 2 of Part 1 of the Education Code, to read:

Article 6. Alternative Schools, Charter Schools, and School Choice

SEC. 28. The heading of Article 4 (commencing with Section 240) of Chapter 2 of Part 1 of the Education Code, is amended and renumbered to read:

Article 7. Instructional Materials

SEC. 29. The heading of Article 5 (commencing with Section 250) of Chapter 2 of Part 1 of the Education Code is amended and renumbered to read:

Article 8. Compliance

SEC. 30. Section 250 of the Education Code is amended to read:

250. Prior to receipt of any state financial assistance or state student financial aid, an educational institution shall provide assurance to the agency administering the funds, in the manner required by the funding agency, that each program or activity conducted by the educational institution will be conducted in compliance with the provisions of this chapter and all other applicable provisions of state law prohibiting discrimination. A single assurance, not more than one page in length and signed by an appropriate responsible official of the educational institution, may be provided for all the programs and activities conducted by an educational institution.

SEC. 31. Section 251 of the Education Code is amended to read:

251. (a) A school district shall submit timely, complete, and accurate compliance reports to the State Department of Education as that entity may require.

(b) All reports submitted pursuant to this section shall be made available by the educational institution for public inspection during regular business hours.

SEC. 32. Section 253 of the Education Code is amended to read:

253. (a) Compliance with the sex discrimination provisions of this chapter and regulations adopted pursuant to this chapter shall be included in the annual Coordinated Compliance Review Manual provided to school districts by the Superintendent of Public Instruction. Any review of that compliance shall also include a review of the school district's records of complaints of sexual harassment brought by pupils and employees of the school district.

(b) The superintendent shall annually review 20 school districts for compliance with sex discrimination laws and regulations as specified in subdivision (a). The superintendent shall select from those districts subject to review, in a given year, a sampling of districts from each of the following categories:

(1) Those districts within which the greatest number of sex discrimination complaints have been filed since its previous coordinated compliance review.

(2) Those districts with the largest enrollments.

(3) All other districts, selected on a random basis.

(c) The superintendent and the department shall only be required to implement the provisions enumerated in this section in fiscal years in which sufficient funds have been appropriated for those purposes.

SEC. 33. The heading of Article 6 (commencing with Section 260) of Chapter 2 of Part 1 of the Education Code is amended and renumbered to read:

Article 9. Enforcement

SEC. 34. Section 262 of the Education Code is amended and renumbered to read:

66292. (a) The governing board of a community college district shall have the primary responsibility for ensuring that community college district programs and activities are free from discrimination based on ethnic group identification, religion, age, sex, color, or physical or mental disability.

(b) The Chancellor's office of the California Community Colleges shall have responsibility for monitoring the compliance of each district with any and all regulations adopted pursuant to Section 11138 of the Government Code.

SEC. 35. Section 262.1 of the Education Code is amended and renumbered to read:

66292.1. The Chancellor of the California State University and the president of each California State University campus shall have the primary responsibility for ensuring that campus programs and activities are free from discrimination based on ethnic group identification, religion, age, sex, color, or physical or mental disability.

SEC. 36. Section 262.2 of the Education Code is amended and renumbered to read:

66292.2. The President of the University of California and the chancellor of each University of California campus shall have primary responsibility for ensuring that campus programs and activities are free from discrimination based on ethnic group identification, religion, age, sex, color, or physical or mental disability.

SEC. 37. Section 262.3 of the Education Code is amended to read:

262.3. (a) A party to a written complaint of prohibited discrimination may appeal the action taken by the governing board of a school district pursuant to this article, to the State Department of Education.

(b) Persons who have filed a complaint, pursuant to this chapter, with an educational institution shall be advised by the educational institution that civil law remedies, including, but not limited to,

injunctions, restraining orders, or other remedies or orders may also be available to complainants. The educational institution shall make this information available by publication in appropriate informational materials.

(c) Nothing in this chapter shall be construed to require an exhaustion of the administrative complaint process before civil law remedies may be pursued.

(d) Notwithstanding any other provision of law, a person who alleges that he or she is a victim of discrimination may not seek civil remedies pursuant to this section until at least 60 days have elapsed from the filing of an appeal to the State Department of Education pursuant to Chapter 5.1 (commencing with Section 4600) of Division 1 of Title 5 of the California Code of Regulations. The moratorium imposed by this subdivision does not apply to injunctive relief and is applicable only if the local educational agency has appropriately, and in a timely manner, apprised the complainant of his or her right to file a complaint.

SEC. 38. Section 262.4 is added to the Education Code, to read:

262.4. This chapter may be enforced through a civil action.

SEC. 39. Section 263 of the Education Code is amended and renumbered to read:

66293. The California Postsecondary Education Commission shall report to the Legislature and Governor on the representation and utilization of ethnic minorities and women among academic, administrative, and other employees at the community colleges, the California State University, and the University of California, pursuant to Sections 66903.1 and 66903.3.

SEC. 40. The heading of Article 11 (commencing with Section 280) is added to Chapter 2 of Part 1 of the Education Code, to read:

Article 11. The Bill Bradley Human Relations Pilot Project

SEC. 41. Section 33032.5 of the Education Code is amended and renumbered to read:

233. (a) At the request of the Superintendent of Public Instruction, the State Board of Education shall do all of the following as long as the board's actions do not result in a state mandate or an increase in costs to a state or local program:

(1) Adopt policies directed toward creating a school environment in kindergarten and grades 1 to 12, inclusive, that is free from discriminatory attitudes and practices and acts of hate violence.

(2) Revise, as needed, and in accordance with the State Board of Education's adopted Schedule for Curriculum Framework Development and Adoption of Instructional Materials developed pursuant to Section 60200, the state curriculum frameworks and guidelines and the moral and civic education curricula to include human relations education, with the aim of fostering an appreciation of people of different ethnicities.

(3) Establish guidelines for use in teacher and administrator in-service training programs to promote an appreciation of diversity and to discourage the development of discriminatory attitudes and practices that prevent pupils from achieving their full potential.

(4) Establish guidelines for use in teacher and administrator in-service training programs designed to enable teachers and administrators to prevent and respond to acts of hate violence occurring on their school campuses.

(5) Establish guidelines designed to raise the awareness and sensitivity of teachers, administrators, and school employees to potentially prejudicial and discriminatory behavior and to encourage the participation of these groups in these programs.

(6) Develop guidelines relating to the development of nondiscriminatory instructional and counseling methods.

(7) Revise any appropriate guidelines previously adopted by the board to include procedures for preventing and responding to acts of hate violence.

(b) The State Department of Education, in accordance with policies established by the State Board of Education for purposes of this subdivision, shall do all of the following:

(1) Prepare guidelines for the design and implementation of local programs and instructional curricula that promote understanding, awareness, and appreciation of the contributions of people with diverse backgrounds and of harmonious relations in a diverse society. The guidelines shall include methods of evaluating the programs and curricula and suggested procedures to ensure coordination of the programs and curricula with appropriate local public and private agencies.

(2) Provide grants, from funds appropriated for that purpose, to school districts and county offices of education to develop programs and curricula consistent with the guidelines developed in paragraph (1).

(3) To the extent possible, provide advice and direct services, consistent with the guidelines developed in paragraph (1), to school districts and county offices of education that implement the programs and curricula developed in paragraph (2).

(c) The State Board of Education shall carry out this section only if private funds, in an amount sufficient to pay for related State Department of Education staff activities on behalf of the board, are made available.

(d) Nothing in this section shall be construed to require the governing board of a school district to offer any ethnic studies or human relations courses in the district.

(e) As used in this section, "hate violence" means any act punishable under Section 422.6, 422.7, or 422.75 of the Penal Code.

SEC. 42. Section 44806 of the Education Code is amended and renumbered to read:

233.5. (a) Each teacher shall endeavor to impress upon the minds of the pupils the principles of morality, truth, justice, patriotism, and a true comprehension of the rights, duties, and dignity of American citizenship, and the meaning of equality and human dignity, including the promotion of harmonious relations, kindness toward domestic pets and the humane treatment of living creatures, to teach them to avoid idleness, profanity, and falsehood, and to instruct them in manners and morals and the principles of a free government.

(b) Each teacher is also encouraged to create and foster an environment that encourages pupils to realize their full potential and that is free from discriminatory attitudes, practices, events, or activities, in order to prevent acts of hate violence, as defined in subdivision (e) of Section 233.

SEC. 43. The heading of Article 8 (commencing with Section 52905) of Chapter 12 of Part 28 of the Education Code is repealed.

SEC. 44. Section 52905 of the Education Code is amended and renumbered to read:

280. The Legislature finds and declares all of the following:

(a) California's schoolage population is changing dramatically, becoming increasingly diverse both racially and ethnically. These changing patterns of our social fabric have presented society with serious opportunities and concerns in the area of human relations.

(b) School districts are an effective vehicle for teaching children human relations and prejudice reduction.

(c) Through the use of a pilot project, human relations materials that foster cooperation and group work can increase academic achievement and self-esteem, and promote positive interaction among pupils from different racial, religious, and ethnic groups.

(d) It is the intent of the Legislature that the development of human relations materials and staff training modules provide models for the implementation of California's most recent History/Social Studies Framework.

SEC. 45. Section 52906 of the Education Code is amended and renumbered to read:

281. (a) The Superintendent of Public Instruction shall authorize the development of the Bill Bradley Human Relations Pilot Project for teaching a course on human relations, and shall do the following:

(1) Consult with teachers, administrators, school board members, a representative of the California Congress of Parents, Teachers, and Students, and at least four statewide human relations agencies, including the Anti-Defamation League of B'nai B'rith, the National Association for the Advancement of Colored People, the Asian Pacific American Legal Center, and the Mexican American Legal Defense Educational Fund, in the development of the human relations course.

(2) Recommend the course curriculum to the State Board of Education.

(3) Select three school districts, from among interested school districts, to participate in the pilot project. The selected districts shall reflect the geographic and ethnic diversity of communities in California.

(4) Oversee the training of appropriate staff in the three school districts pursuant to this article.

(5) Designate whether the course shall be for 5 or 10 weeks in duration.

(b) Either the superintendent or the participating school districts shall designate whether the course will be taught in grade 8, 9, or 10.

(c) The course shall be designed to allow the selected school districts to tailor the materials to the needs of their specific communities.

SEC. 46. Section 52907 of the Education Code is amended and renumbered to read:

282. The human relations course developed pursuant to this article shall encompass the following goals:

(a) Fostering cooperation and promoting positive interaction among pupils of different racial and ethnic groups.

(b) Developing an understanding of ethnic diversity within California, throughout the nation, and in the world.

(c) Understanding the dangers of stereotyping and discrimination that have existed throughout history and recognizing the protections offered to all by a democratic society.

(d) Appreciating the contributions of minority groups to the development of the United States.

SEC. 47. Section 52908 of the Education Code is amended and renumbered to read:

283. The human relations course developed pursuant to this article shall be designed and be ready for implementation by the 1990-91 school year.

SEC. 48. Section 58508 of the Education Code is amended and renumbered to read:

235. There shall be no racial, sex, or ethnic discrimination in any aspect of the operation of alternative schools, charter schools, or the Demonstration Scholarship Program.

SEC. 49. Chapter 4.5 (commencing with Section 66250) is added to Part 40 of the Education Code, to read:

CHAPTER 4.5. SEX EQUITY IN EDUCATION ACT

Article 1. Title and Declaration of Purpose

66250. This chapter shall be known, and may be cited, as the Sex Equity in Education Act.

66251. It is the policy of the State of California to afford all persons, regardless of their sex, ethnic group identification, race, national origin, religion, or mental or physical disability, equal rights and opportunities in the postsecondary institutions of the state. The purpose of this chapter is to prohibit acts that are contrary to that policy and to provide remedies therefor.

66252. (a) All students have the right to participate fully in the educational process, free from discrimination and harassment.

(b) California's postsecondary educational institutions have an affirmative obligation to combat racism, sexism, and other forms of bias, and a responsibility to provide equal educational opportunity.

(c) Harassment on school grounds directed at an individual on the basis of personal characteristics or status creates a hostile environment and jeopardizes equal educational opportunity as guaranteed by the California Constitution and the United States Constitution.

(d) There is an urgent need to prevent and respond to acts of hate violence and bias-related incidents that are occurring at an increasing rate in California's public schools.

(e) There is an urgent need to teach and inform students in the public schools about their rights, as guaranteed by the federal and state constitutions, in order to increase students' awareness and understanding of their rights and the rights of others, with the intention of promoting tolerance and sensitivity in postsecondary educational institutions and in society as a means of responding to potential harassment and hate violence.

(f) It is the intent of the Legislature that each postsecondary educational institution undertake educational activities to counter discriminatory incidents on school grounds and, within constitutional bounds, to minimize and eliminate a hostile environment on school grounds that impairs the access of students to equal educational opportunity.

(g) It is the intent of the Legislature that this chapter shall be interpreted as consistent with Article 9.5 (commencing with Section 11135) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code, Title VI of the federal Civil Rights Act of 1964 (42 U.S.C. Sec. 1981, et seq.), Title IX of the Education Amendments of 1972 (20 U.S.C. Sec. 1681, et seq.), Section 504 of the federal Rehabilitation Act of 1973 (29 U.S.C. Sec. 794(a)), the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.), the federal Equal Educational Opportunities Act (20 U.S.C. Sec. 1701, et seq.), the Unruh Civil Rights Act (Secs. 51 to 53, incl., Civ. C.), and the Fair Employment and Housing Act (Pt. 2.8 (commencing with Sec. 12900), Div. 3, Gov. C.), except where this chapter may grant more protections or impose additional obligations, and that the remedies provided herein shall not be the exclusive remedies, but may be combined with remedies that may be provided by the above statutes.

Article 2. Definitions

66260. The definitions in this article shall govern the use of the terms defined for purposes of this chapter.

66261. "Governing board" means the governing board of a community college.

66261.5. "Postsecondary educational institution" means a public or private institution of vocational, professional, or postsecondary education; the governing board of a community college district; the Regents of the University of California; or the Trustees of the California State University.

66262. "Sex" has the same meaning as defined in Section 212.

66262.5. "Sexual harassment" has the same meaning as defined in Section 212.5.

66263. "State financial assistance" has the same meaning as defined in Section 213.

66264. "State student financial aid" has the same meaning as defined in Section 214.

Article 3. Prohibition of Discrimination

66270. No person shall be subjected to discrimination on the basis of sex, ethnic group identification, race, national origin, religion, color, or mental or physical disability in any program or activity conducted by any postsecondary educational institution that receives, or benefits from, state financial assistance or enrolls students who receive state student financial aid.

66271. This chapter shall not apply to an educational institution that is controlled by a religious organization if the application would not be consistent with the religious tenets of that organization.

66271.1. The Board of Governors of the California Community Colleges and the Trustees of the California State University shall, and the Regents of the University of California may, adopt regulations as required by law to implement this chapter.

Article 4. Sex Equity in Education

66271.5. The provisions of this article are supplemental to any provision in the Constitution or laws of the United States or laws of the State of California, relating to discrimination.

66273. This article shall not apply to the membership practices of a social fraternity or social sorority, exempt from taxation under subdivision (a) of Section 501 of the federal Internal Revenue Code of 1954, whose active membership consists primarily of students in attendance at a postsecondary educational institution.

66281.5. (a) It is the policy of the State of California, pursuant to Section 66251, that all persons, regardless of their sex, should enjoy freedom from discrimination of any kind in the postsecondary

educational institution of the state. The purpose of this section is to provide notification of the prohibition against sexual harassment as a form of sexual discrimination and to provide notification of available remedies.

(b) Each postsecondary educational institution in the State of California shall have a written policy on sexual harassment. It is the intent of the Legislature that each educational institution in this state include this policy in its regular policy statement rather than distribute an additional written document.

(c) The postsecondary educational institution's written policy on sexual harassment shall include information on where to obtain the specific rules and procedures for reporting charges of sexual harassment and for pursuing available remedies.

(d) A copy of the postsecondary educational institution's written policy on sexual harassment shall be displayed in a prominent location in the main administrative building or other area of the campus or schoolsite. "Prominent location" means that location, or those locations, in the main administrative building or other area where notices regarding the institution's rules, regulations, procedures, and standards of conduct are posted.

(e) A copy of the postsecondary educational institution's written policy on sexual harassment, as it pertains to students, shall be provided as part of any orientation program conducted for new students at the beginning of each quarter, semester, or summer session, as applicable.

(f) A copy of the postsecondary educational institution's written policy on sexual harassment shall be provided for each faculty member, all members of the administrative staff, and all members of the support staff at the beginning of the first quarter or semester of the school year, or at the time that there is a new employee hired.

(g) A copy of the postsecondary educational institution's written policy on sexual harassment shall appear in any publication of the institution that sets forth the comprehensive rules, regulations, procedures, and standards of conduct for the institution.

Article 5. Compliance and Enforcement

66290. Prior to receipt of any state financial assistance or state student financial aid, a postsecondary educational institution shall provide assurance to the agency administering the funds, in the manner required by the funding agency, that each program or activity conducted by the postsecondary educational institution will be conducted in compliance with this chapter and all other applicable provisions of state law prohibiting discrimination on the basis of sex. A single assurance, not more than one page in length and signed by an appropriate responsible official of the postsecondary educational institution, may be provided for all the programs and activities conducted by a postsecondary educational institution.

66291. (a) A community college district shall submit timely, complete, and accurate compliance reports to the chancellor's office, as that entity may require.

(b) All reports submitted pursuant to this section shall be made available by the educational institution for public inspection during regular business hours.

66292.3. (a) A party to a written complaint of prohibited discrimination may appeal the action taken by the governing board of a community college district or the president of a campus of the California State University, pursuant to this article, to the Board of Governors of the California Community Colleges or the Chancellor of the California State University, as applicable.

(b) Persons who have filed a complaint, pursuant to this chapter, with an educational institution shall be advised by the educational institution that civil law remedies, including, but not limited to, injunctions, restraining orders, or other remedies or orders, may also be available to complainants. The educational institution shall make this information available by publication in appropriate informational materials.

(c) Nothing in this chapter shall be construed to require an exhaustion of the appeal to the Board of Governors of the California Community Colleges or to the Chancellor of the California State University pursuant to subdivision (a), before civil law remedies may be purchased.

(d) Notwithstanding any other provision of law, a person who alleges that he or she is a victim of discrimination may not seek civil remedies pursuant to this section until at least 90 days have elapsed from the filing of a discrimination complaint with the local educational agency. The 90-day moratorium imposed by this subdivision does not apply to injunctive relief and is applicable only if the local educational agency has appropriately, and in a timely manner, apprised the complainant of his or her right to file a complaint.

66292.4. This chapter may be enforced through a civil action.

SEC. 50. Section 72012 of the Education Code is amended to read:

72012. Every community college shall comply with Sections 221.5, 221.7, and 66016, relating to sex discrimination.

SEC. 51. Section 72015 of the Education Code is amended and renumbered to read:

66271.7. (a) It is the policy of the state that community college classes and courses, including nonacademic and elective classes and courses, shall be conducted without regard to the sex of the student enrolled in these classes and courses.

(b) No community college district shall prohibit any student from enrolling in any class or course on the basis of the sex of the student.

(c) No community college district shall require students of one sex to enroll in a particular class or course, unless the same class or course is also required of students of the opposite sex.

(d) No school counselor, teacher, instructor, administrator, or aide shall, on the basis of the sex of a student, offer vocational or school program guidance to students of one sex which is different from that offered to students of the opposite sex or, in counseling students, differentiate career, vocational or higher education opportunities on the basis of the sex of the student counseled. Any school personnel acting in a career counseling or course selection capacity to any pupil shall affirmatively explore with the pupil the possibility of careers, or courses leading to careers, that are nontraditional for that pupil's sex.

(e) Participation in a particular physical education activity or sport, if required of students of one sex, shall be available to students of each sex.

(f) The Legislature finds and declares that female students are not accorded opportunities for participation in community college athletic programs equal to those accorded male students. It is the intent of the Legislature that opportunities for participation in community college athletics be provided equally to male and female students and on an equitable basis to all students.

(g) Insofar as practicable, in apportioning public funds, community college district governing boards shall apportion amounts available for athletics to ensure that equitable amounts will be allocated for all students, except that allowances may be made for differences in the costs of various athletic programs. Notwithstanding any other provisions of law, no public funds shall be used in connection with any athletic program conducted under the auspices of the governing board of a community college district, or any student organization within the district, which does not provide equal opportunity to both sexes for participation and for use of facilities. Facilities and opportunities for participation shall include, but are not limited to, equipment and supplies, scheduling of games and practice time, compensation for coaches, travel arrangements, per diem, locker rooms, and medical services.

(h) It is the further intent of the Legislature that females be given the same opportunity to participate in athletics and compete with other females in individual and team sports as is available to males who compete with other males in individual and team sports. Nothing in this section shall be construed to require a community college to require competition between male and female students in school-sponsored athletic programs.

CHAPTER 915

An act to amend, repeal, and add Section 1282.4 of the Code of Civil Procedure, relating to arbitration.

[Approved by Governor September 28, 1998. Filed with Secretary of State September 28, 1998.]

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

SECTION 1. Section 1282.4 of the Code of Civil Procedure is amended to read:

1282.4. (a) A party to the arbitration has the right to be represented by an attorney at any proceeding or hearing in arbitration under this title. A waiver of this right may be revoked; but if a party revokes such waiver, the other party is entitled to a reasonable continuance for the purpose of procuring an attorney.

(b) Notwithstanding any other provision of law, including Section 6125 of the Business and Professions Code, an attorney admitted to the bar of any other state may represent the parties in the course of, or in connection with, an arbitration proceeding in this state, provided that the attorney, if not admitted to the State Bar of California, timely files the certificate described in subdivision (c) and the attorney's appearance is approved by the arbitrator, the arbitrators, or the arbitral forum.

(c) Prior to the first scheduled hearing in an arbitration, the attorney described in subdivision (b) shall serve a certificate on the arbitrator or arbitrators, the State Bar of California, and all other parties and counsel in the arbitration whose addresses are known to the attorney. In the event that the attorney is retained after the first hearing has commenced, then the certificate shall be served prior to the first hearing at which the attorney appears. The certificate shall state all of the following:

(1) The attorney's residence and office address.

(2) The courts before which the attorney has been admitted to practice and the dates of admission.

(3) That the attorney is currently a member in good standing of, and eligible to practice law before, the bar of those courts.

(4) That the attorney is not currently on suspension or disbarred from the practice of law before the bar of any court.

(5) That the attorney is not a resident of the State of California.

(6) That the attorney is not regularly employed in the State of California.

(7) That the attorney is not regularly engaged in substantial business, professional, or other activities in the State of California.

(8) That the attorney agrees to be subject to the jurisdiction of the courts of this state with respect to the law of this state governing the conduct of attorneys to the same extent as a member of the State Bar of California.

(9) The title of the court and the cause in which the attorney has filed an application to appear as counsel pro hac vice in this state or filed a certificate pursuant to this section in the preceding two years, the date of each application, and whether or not it was granted.

(10) The name, address, and telephone number of the active member of the State Bar of California who is the attorney of record.

(d) Failure to timely file the certificate described in subdivision (c) or, absent special circumstances, repeated appearances shall be grounds for disqualification from serving as the attorney of record in the arbitration in which the certificate was filed.

(e) An attorney who files a certificate containing false information or who otherwise fails to comply with the standards of professional conduct required of members of the State Bar of California shall be subject to the disciplinary jurisdiction of the State Bar with respect to any of his or her acts occurring in the course of the arbitration.

(f) Notwithstanding any other provision of law, including Section 6125 of the Business and Professions Code, an attorney who is a member in good standing of the bar of any state may represent the parties in connection with rendering legal services in this state in the course of and in connection with an arbitration pending in another state.

(g) Notwithstanding any other provision of law, including Section 6125 of the Business and Professions Code, any party to an arbitration arising under collective bargaining agreements in industries and provisions subject to either state or federal law may be represented in the course of, and in connection with, those proceedings by any person, regardless of whether that person is licensed to practice law in this state.

(h) Nothing in this section shall apply to Division 4 (commencing with Section 3201) of the Labor Code.

(i) (1) In enacting the amendments to this section made by Assembly Bill 2086 of the 1997–98 Regular Session, it is the intent of the Legislature to respond to the holding in Birbrower v. Superior Court (1998) 17 Cal.4th 117, as modified at 17 Cal.4th 643a (hereafter Birbrower), to provide a procedure for nonresident attorneys who are not licensed in this state to appear in California arbitration proceedings.

(2) In enacting subdivision (g), it is the intent of the Legislature to make clear that any party to an arbitration arising under a collective bargaining agreement governed by the laws of this state may be represented in the course of and in connection with those proceedings by any person regardless of whether that person is licensed to practice law in this state.

(3) Except as otherwise specifically provided in this section, in enacting the amendments to this section made by Assembly Bill 2086 of the 1997–98 Regular Session, it is the Legislature's intent that nothing in this section is intended to expand or restrict the ability of a party prior to the decision in Birbrower to elect to be represented by any person in a nonjudicial arbitration proceeding, to the extent those rights or abilities existed prior to that decision. To the extent that Birbrower is interpreted to expand or restrict that right or ability pursuant to the laws of this state, it is hereby abrogated except as specifically provided in this section.

(4) In enacting subdivision (h), it is the intent of the Legislature to make clear that nothing in this section shall affect those provisions of law governing the right of injured workers to elect to be represented by any person, regardless of whether that person is licensed to practice law in this state, as set forth in Division 4 (commencing with Section 3200) of the Labor Code.

(j) This section shall be operative until January 1, 2001, and on that date shall be repealed.

SEC. 2. Section 1282.4 is added to the Code of Civil Procedure, to read:

1282.4. (a) A party to the arbitration has the right to be represented by an attorney at any proceeding or hearing in arbitration under this title. A waiver of this right may be revoked; but if a party revokes the waiver, the other party is entitled to a reasonable continuance for the purpose of procuring an attorney.

(b) This section shall become operative on January 1, 2001.

CHAPTER 916

An act to add Chapter 4.5 (commencing with Section 927) to Part 3 of Division 3.6 of Title 1 of, and to repeal Sections 926.15, 926.17, and 926.18 of, the Government Code, relating to state contracts.

[Approved by Governor September 28, 1998. Filed with Secretary of State September 28, 1998.]

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

SECTION 1. Section 926.15 of the Government Code, as added by Section 1 of Chapter 360 of the Statutes of 1997, is repealed.

SEC. 2. Section 926.15 of the Government Code, as amended by Section 2 of Chapter 360 of the Statutes of 1997, is repealed.

SEC. 3. Section 926.17 of the Government Code is repealed.

SEC. 4. Section 926.18 of the Government Code is repealed.

SEC. 5. Chapter 4.5 (commencing with Section 927) is added to Part 3 of Division 3.6 of Title 1 of the Government Code, to read:

CHAPTER 4.5. PROMPT PAYMENT OF CLAIMS

927. (a) This chapter shall be known and may be cited as the California Prompt Payment Act.

(b) It is the intent of the Legislature that state agencies pay properly submitted, undisputed invoices within 45 days of receipt, or automatically calculate and pay the appropriate late payment penalties as specified in this chapter.

(c) Notwithstanding any other provision of law, this chapter shall apply to all state agencies, including, but not limited to, the Public

Employees' Retirement System, the State Teachers' Retirement System, the Treasurer, and the Department of General Services.

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

(b) Except in the event of an emergency as provided in Section 927.11, effective January 1, 1999, the late payment penalties specified in this chapter may not be waived, altered, or limited by a state agency acquiring property or services pursuant to a contract or by any person or business contracting with a state agency to provide property or services.

927.2. The following definitions apply to this chapter:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) The principal office is located in California.

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

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

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

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

927.3. Except where payment is made directly by a state agency pursuant to Section 927.6, any undisputed invoice received by a state agency shall be submitted to the Controller for payment by the required payment approval date. A state agency may dispute an invoice submitted by a contractor for reasonable cause if the state agency notifies the contractor within 15 working days from receipt of the invoice, or delivery of the property or services, whichever is later. No state employee shall dispute an invoice, on the basis of minor or technical defects, in order to circumvent or avoid the general intent or any of the specific provisions of this chapter.

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

927.5. This chapter shall not apply to claims for reimbursement for health care services provided under the Medi-Cal program, unless the Medi-Cal health care services provider is a small business or nonprofit organization. In applying this section to claims submitted to the state, or its fiscal intermediary, by providers of services or equipment under the Medi-Cal program, payment for claims shall be due 30 days after a claim is received by the state or its fiscal intermediary, unless reasonable cause for nonpayment exists. With regard to Medi-Cal claims, reasonable cause shall include review of claims to determine medical necessity, review of claims for providers subject to special prepayment fraud and abuse controls, and claims that require review by the fiscal intermediary or State Department of Health Services due to special circumstances. Claims requiring special review as specified above shall not be eligible for a late payment penalty.

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

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

927.7. The Controller shall pay contractors within 15 calendar days of receipt of a correct claim schedule from the state agency. If the Controller fails to make payment within 15 calendar days of receipt of the claim schedule from a state agency, the Controller shall pay applicable penalties to the contractor without requiring that the contractor submit an invoice for these amounts. Penalties shall cease to accrue on the date full payment is made, and shall be paid for out of the Controller's funds. If the contractor is a certified small business, a nonprofit organization, a nonprofit public benefit corporation, or a small business or nonprofit organization that provides services or equipment under the Medi-Cal program, the Controller shall pay to the contractor a penalty of 0.25 percent of the amount due, per calendar day, from the 16th calendar day following receipt of the claim schedule from the state agency. However, a nonprofit organization shall only be eligible to receive a penalty payment if it has been awarded a contract in an amount less than five hundred thousand dollars ($500,000). For all other businesses, the Controller shall pay penalties at a rate of 1 percent above the rate accrued on June 30 of the prior year by the Pooled Money Investment Account, not to exceed a rate of 15 percent, except that, if the amount of the penalty is seventy-five dollars ($75) or less, the penalty shall be waived and not paid by the Controller.

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

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

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

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

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

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

(c) If the Director of Finance determines that a state agency or the Controller is unable to promptly pay an invoice as provided for by this chapter due to a major calamity, disaster, or criminal act, then otherwise applicable late payment penalty provisions contained in Section 927.7 shall be suspended except as they apply to a contractor which is either a certified small business, a nonprofit organization, a nonprofit public benefit corporation, or a small business or nonprofit organization that provides services or equipment under the Medi-Cal program. The suspension shall remain in effect until the

Director of Finance determines that the suspended late payment penalty provisions of this section should be reinstated.

(d) Except as provided in subdivision (b), in the event a state agency fails to make timely payment because no Budget Act has been enacted, penalties shall continue to accrue until the time that the invoice is paid.

927.12. Section 926.10 shall not apply to any contract covered by this chapter.

CHAPTER 917

An act to add a heading as Article 1 (commencing with Section 14835) to, and to add Article 2 (commencing with Section 14845) to, Chapter 6.5 of Part 5.5 of Division 3 of Title 2 of the Government Code, relating to state contracts.

[Approved by Governor September 28, 1998. Filed with Secretary of State September 28, 1998.]

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

SECTION 1. A heading is added to the Government Code immediately preceding Section 14835, to read:

Article 1. General Provisions

SEC. 2. Article 2 (commencing with Section 14845) is added to Chapter 6.5 of Part 5.5 of Division 3 of Title 2 of the Government Code, to read:

Article 2. Small Business Advocacy

14845. Using existing resources, the Department of General Services' small business advocate shall, at a minimum, provide the following services:

(a) Assist small businesses by providing information regarding all of the following:

(1) Identification of potential small business subcontractors and potential subcontracting opportunities.

(2) Solicitation protest procedures and timelines.

(3) Prompt payment procedures.

(b) Using existing resources, develop and maintain an outreach and education program to assist small businesses to establish the California multiple award schedule. The department shall actively promote the availability of small business suppliers to deliver or provide a broad range of goods and services to governmental agencies through their participation in the California multiple award

schedule program established pursuant to Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code and other types of contracts established by state agencies for repetitively used and commonly needed goods and services.

(c) Whenever the director consolidates the needs of multiple state agencies and establishes a contract for repetitively purchased or commonly needed goods or services, the director shall both encourage bidders to utilize small business suppliers and subcontractors, and utilize multiple award methods whenever practicable to further ensure that a fair proportion of needed goods and services are obtained from small businesses.

(d) Using existing resources, establish a training and development program for acquisition professionals, including methods for structuring solicitations to enhance the participation of small businesses in state contracting.

(e) Using existing resources, the department shall establish a recognition and awards program for state employees who make an outstanding contribution to the state's overall effort to increase the level of small business participation in state contracting.

(f) Prepare, and make available to the public, a directory of certified small business suppliers.

(g) In its review of state agency acquisitions, the department, as applicable, shall identify areas where improvements in the level of participation of small businesses in state contracting can be achieved.

14846. (a) (1) Using existing resources, each state agency shall consolidate its existing staff functions that relate to contract opportunities for small business into a single point of contact for small businesses and designate a small business advocate as a liaison to small business suppliers.

(2) Each small business advocate shall, at a minimum, provide for both of the following:

(A) Make information regarding pending solicitations available to, and consider offers from, California small business suppliers capable of meeting the state's business need, and who have registered with the state for this purpose.

(B) Ensure that payments due on a contract with a small business are made promptly, as provided for in Section 926.15 or 927, whichever applies.

(3) This subdivision shall not apply to state agencies whose contracting expenditures total less than one hundred thousand dollars ($100,000) annually.

(b) Prior to placing orders under the California multiple awards schedule program, state agencies shall first consider offers from small businesses that have established multiple award schedules whenever practicable.

(c) State agencies shall identify and implement innovative acquisition operating processes, including payment processes, and strategies for small business participation. To maximize the benefits,

state agencies shall actively share information about these innovative processes with other state agencies.

(d) State agencies shall prepare solicitations, and any related bid submission requirements, in a manner consistent with the scope, complexity, and anticipated cost of the acquisition. Where appropriate, state agencies shall provide bidders with simplified and streamlined tools and methods for responding to solicitations that allow bidders to efficiently, expeditiously, and cost-effectively respond to the contracting opportunity.

14847. (a) In determining eligibility of a business for an award, state agencies may consider all of the following:

(1) Whether the bidder has the necessary facilities, organizational capability, experience, managerial and technical competency and skills, and financial resources to fulfill the terms of the contract.

(2) Whether the bidder has the capability to comply with the required delivery or performance schedule, taking into consideration other business commitments.

(3) Whether the bidder has a history of satisfactory or better performance, as demonstrated by a results-oriented track record, written performance evaluations, or other relevant information obtained from references.

(b) State agencies may enter into contracts with multiple sources when in the best interests of the state.

(c) The Department of General Services shall establish procedures and guidelines for the implementation of this article.

CHAPTER 918

An act to amend Sections 31470.2, 31470.3, 74368, and 74370 of the Government Code, relating to court employees, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 28, 1998. Filed with Secretary of State September 28, 1998.]

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

SECTION 1. Section 31470.2 of the Government Code is amended to read:

31470.2. All sheriffs, undersheriffs, chief deputies sheriff, jailers, turnkeys, deputies sheriff, bailiffs, constables, deputies constable, motorcycle officers, aircraft pilots, heads and assistant heads of all divisions of the office of the sheriff, detectives and investigators in the office of the district attorney, marshals, court service officers only in a county of the third class, as defined in Sections 28020 and 28024, and all regularly appointed deputies marshals are eligible.

SEC. 2. Section 31470.3 of the Government Code is amended to read:

31470.3. Clerks, bookkeepers, stenographers, court service officers, except in a county of the third class, as defined in Sections 28020 and 28024, and other employees who may have been appointed as deputies sheriff or deputies marshal but who do not perform the duties of any peace officers enumerated and honorary deputies sheriff or other persons holding appointments as deputies sheriff who receive no compensation therefor who do not regularly perform official duties and those whose principal duties clearly do not fall within the scope of active law enforcement, even though such a person is subject to occasional call, or is occasionally called upon to perform duties within the scope of active law enforcement are ineligible.

SEC. 3. Section 74368 of the Government Code is amended to read:

74368. The marshal may make the following appointments:

(a) One assistant marshal.

(b) Four captains.

(c) Five lieutenants.

(d) Twenty sergeants.

(e) One hundred ninety-two deputy marshals.

Any deputy marshal who may be assigned by the marshal to one of 10 positions designated as lead deputy shall receive, while serving in that capacity, biweekly compensation at a rate 5 percent higher than that received by the deputy.

The marshal may, at his or her discretion, fill a deputy marshal or court service officer position by accepting a lateral transfer from another California peace officer agency. The transferee shall have completed a California P.O.S.T. certified basic academy and been employed for at least one year in a position enumerated in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code within the past three years.

(f) One administrative secretary I, II, or III.

(g) One administrative services manager I, II, or III or administrative assistant III.

(h) One accounting technician.

(i) Two senior typists.

(j) Thirty-five field service officers.

Notwithstanding any other provisions of this article, in no event shall a field service officer's salary be less than 65 percent of the salary of a deputy marshal at the corresponding pay step. The field service officer is a peace officer trainee position which requires appointees to be at least 18 years of age and meet the qualifications and standards prescribed for deputy marshals. At the time an incumbent in the class of field service officer attains the age of 21, he or she may be appointed by the marshal to a position in the class of deputy marshal

or court service officer, provided such position is open, without further qualification or examination.

A field service officer shall receive 65 percent of the uniform allowance prescribed for deputy marshals. In the event that a field service officer is appointed to the class of deputy marshal or court service officer, he or she shall receive the amount of reimbursement of the cost of required uniforms and equipment prescribed for a newly hired deputy marshal or court service officer, less any reimbursement received by him or her for the cost of required field service officer uniforms and equipment.

(k) One departmental computer specialist I, II, or III.

(*l*) Nine legal procedures clerks III.

(m) Forty-three legal procedures clerks II or I.

(n) One hundred five court service officers. In no event shall a court service officer's salary be less than 80 percent of a deputy marshal at the corresponding pay step. A court service officer shall receive the same uniform allowance prescribed for a deputy marshal, under the same conditions prescribed for deputy marshals. The marshal may appoint a court service officer to a vacant position of deputy marshal without further qualification or examination. In the event that a court service officer is appointed to the class of deputy marshal, he or she shall receive the amount of reimbursement prescribed for a newly hired deputy marshal, less any reimbursement received by him or her for the cost of required court service officer uniforms and equipment. Court service officers shall be peace officers pursuant to Section 830.36 of the Penal Code. Notwithstanding any other provision of law, court service officers shall be safety members of the county employees retirement system.

(o) Any person specified in subdivision (f) or (i), who may be assigned by the marshal to one of the positions designated as executive secretary or administrative-personnel secretary shall receive, while serving in that capacity, biweekly compensation at a rate 10 percent higher than that specified for such person's class and step.

(p) Two supervising legal services clerks.

(q) Three marshal's radio trainees or emergency services dispatchers.

(r) Two administrative assistants III, II, I, or trainee.

(s) Two senior systems analysts or senior applications engineers.

(t) Notwithstanding Section 74369, up to 15 extra help positions (hourly rate) to be appointed at a level as determined by and serve at the pleasure of the marshal. Such appointments shall be temporary for a period not to exceed six months, plus one additional period at the marshal's option, not to exceed six months. Notwithstanding any other provisions of this section, the marshal may fill these positions with persons employed for less than 121 working days during a fiscal year on a part-time basis.

(u) Notwithstanding Section 74369, the marshal may appoint up to six temporary extra help marshal student workers I, II, or III who shall be paid at an hourly rate and shall serve at the pleasure of the marshal. A marshal student worker I, II, or III shall receive an hourly salary at the rate equal to that specified for the class of student worker I, II, or III respectively in the unclassified service of the County of San Diego. Persons who graduate and receive a degree in the field which qualified them for appointment to a marshal student worker class may remain in the class and be employed on a full-time basis for up to six months from the first day of the month following their date of graduation.

(v) Two associate systems analysts or assistant systems analysts or applications engineers I or II.

(w) Notwithstanding Section 74369, up to five provisional workers may be appointed by and serve at the pleasure of the marshal. The class of provisional worker provides for temporary appointments to positions in classes not listed in Section 74370 pending a review and evaluation of the duties of these positions by the marshal, and the establishment of specific classes as provided in this subdivision. Prior to the establishment of those classes, the county personnel director shall conduct a classification review and make recommendations to the marshal as to the establishment of such classes. The rate of pay for each individual employed in this class of provisional worker shall be within the range proposed for the class pending establishment, at a rate determined by the marshal following consultation with the county personnel director. The rules regarding appointment and compensation as they relate to appointments to provisional workers shall be the same as those applicable to the class that is pending establishment. Appointments shall be temporary and shall not exceed six months. Employee benefits, if applicable, shall be equal to those granted to the class in the service of the County of San Diego to which the pending class will be tied for benefit purposes. When such an appointment is made, the class, compensation (including salary and fringe benefits), and number of such positions may be established by joint action of the marshal and the board of supervisors in accordance with established county personnel and budgetary procedures. The marshal may then appoint additional attachés to such classes of positions in the same manner as those for which express provision is made, and they shall receive the compensation so provided. Persons occupying provisional worker positions shall have their appointments expire not later than 30 calendar days following promulgation of a list of certified eligibles for the new class. Appointments to the new class shall continue at the stated compensation or as thereafter modified by joint action of the marshal and the board of supervisors.

(x) Notwithstanding any other provision of law, the number of positions in classifications authorized under subdivisions (b) to (s), inclusive, (u), (v) and (w) of this section may be increased by up to

100 additional positions by joint action of the majority of the judges and the board of supervisors in accordance with established county personnel and budgetary procedures. The rules regarding appointment and compensation (including salary and fringe benefits) as they relate to appointments of persons to such positions shall be the same as those applicable to the class of such positions. The action of the majority of the judges and the resolution of the board of supervisors adjusting those positions shall designate the class title or titles and number of positions to be added to each respective class. Any adjustment made pursuant to this subdivision shall be effective on adoption of the resolution by the board of supervisors and shall remain in effect only until January 1 of the second year following the year in which this subdivision becomes effective, unless earlier ratified by the Legislature.

SEC. 3.5. Section 74368 of the Government Code is amended to read:

74368. The marshal may make the following appointments:

(a) One assistant marshal.

(b) Four captains.

(c) Five lieutenants.

(d) Twenty sergeants.

(e) One hundred ninety-two deputy marshals.

Any deputy marshal who may be assigned by the marshal to one of 10 positions designated as lead deputy shall receive, while serving in that capacity, biweekly compensation at a rate 5 percent higher than that received by the deputy.

The marshal may, at his or her discretion, fill a deputy marshal or court service officer position by accepting a lateral transfer from another California peace officer agency. The transferee shall have completed a California P.O.S.T. certified basic academy and been employed for at least one year in a position enumerated in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code within the past three years.

(f) One administrative secretary I, II, or III.

(g) One administrative services manager I, II, or III or administrative assistant III.

(h) One accounting technician.

(i) Two senior typists.

(j) Thirty-five field service officers.

Notwithstanding any other provisions of this article, in no event shall a field service officer's salary be less than 65 percent of the salary of a deputy marshal at the corresponding pay step. The field service officer is a peace officer trainee position which requires appointees to be at least 18 years of age and meet the qualifications and standards prescribed for deputy marshals. At the time an incumbent in the class of field service officer attains the age of 21, he or she may be appointed by the marshal to a position in the class of deputy marshal

or court service officer, provided such position is open, without further qualification or examination.

A field service officer shall receive 65 percent of the uniform allowance prescribed for deputy marshals. In the event that a field service officer is appointed to the class of deputy marshal or court service officer, he or she shall receive the amount of reimbursement of the cost of required uniforms and equipment prescribed for a newly hired deputy marshal or court service officer, less any reimbursement received by him or her for the cost of required field service officer uniforms and equipment.

(k) One departmental computer specialist I, II, or III.

(*l*) Nine legal procedures clerks III.

(m) Forty-three legal procedures clerks II or I.

(n) One hundred five court service officers. In no event shall a court service officer's salary be less than 80 percent of a deputy marshal at the corresponding pay step. A court service officer shall receive the same uniform allowance prescribed for a deputy marshal, under the same conditions prescribed for deputy marshals. The marshal may appoint a court service officer to a vacant position of deputy marshal without further qualification or examination. In the event that a court service officer is appointed to the class of deputy marshal, he or she shall receive the amount of reimbursement prescribed for a newly hired deputy marshal, less any reimbursement received by him or her for the cost of required court service officer uniforms and equipment. Court service officers shall be peace officers pursuant to Section 830.36 of the Penal Code. Notwithstanding any other provision of law, court service officers shall be safety members of the county employees retirement system.

(o) Any person specified in subdivision (f) or (i), who may be assigned by the marshal to one of the positions designated as executive secretary or administrative-personnel secretary shall receive, while serving in that capacity, biweekly compensation at a rate 10 percent higher than that specified for such person's class and step.

(p) Two supervising legal services clerks.

(q) Three marshal's radio trainees or emergency services dispatchers.

(r) Two administrative assistants III, II, I, or trainee.

(s) Two senior systems analysts or senior applications engineers.

(t) Notwithstanding Section 74369, up to 15 extra help positions (hourly rate) to be appointed at a level as determined by and serve at the pleasure of the marshal. Such appointments shall be temporary for a period not to exceed six months, plus one additional period at the marshal's option, not to exceed six months. Notwithstanding any other provisions of this section, the marshal may fill these positions with persons employed for less than 121 working days during a fiscal year on a part-time basis.

(u) Notwithstanding Section 74369, the marshal may appoint up to six temporary extra help marshal student workers I, II, or III who shall be paid at an hourly rate and shall serve at the pleasure of the marshal. A marshal student worker I, II, or III shall receive an hourly salary at the rate equal to that specified for the class of student worker I, II, or III respectively in the unclassified service of the County of San Diego. Persons who graduate and receive a degree in the field which qualified them for appointment to a marshal student worker class may remain in the class and be employed on a full-time basis for up to six months from the first day of the month following their date of graduation.

(v) Two associate systems analysts or assistant systems analysts or applications engineers I or II.

(w) Notwithstanding Section 74369, up to five provisional workers may be appointed by and serve at the pleasure of the marshal. The class of provisional worker provides for temporary appointments to positions in classes not listed in Section 74370 pending a review and evaluation of the duties of these positions by the marshal, and the establishment of specific classes as provided in this subdivision. Prior to the establishment of those classes, the county personnel director shall conduct a classification review and make recommendations to the marshal as to the establishment of such classes. The rate of pay for each individual employed in this class of provisional worker shall be within the range proposed for the class pending establishment, at a rate determined by the marshal following consultation with the county personnel director. The rules regarding appointment and compensation as they relate to appointments to provisional workers shall be the same as those applicable to the class that is pending establishment. Appointments shall be temporary and shall not exceed six months. Employee benefits, if applicable, shall be equal to those granted to the class in the service of the County of San Diego to which the pending class will be tied for benefit purposes. When such an appointment is made, the class, compensation (including salary and fringe benefits), and number of such positions may be established by joint action of the marshal and the board of supervisors in accordance with established county personnel and budgetary procedures. The marshal may then appoint additional attachés to such classes of positions in the same manner as those for which express provision is made, and they shall receive the compensation so provided. Persons occupying provisional worker positions shall have their appointments expire not later than 30 calendar days following promulgation of a list of certified eligibles for the new class. Appointments to the new class shall continue at the stated compensation or as thereafter modified by joint action of the marshal and the board of supervisors.

(x) One departmental LAN analyst III.

(y) One EDP systems manager.

(z) Notwithstanding any other provision of law, the number of positions in classifications authorized under subdivisions (b) to (s), inclusive, (u), (v), (w), (x), and (y) of this section may be increased by up to 100 additional positions by joint action of the majority of the judges and the board of supervisors in accordance with established county personnel and budgetary procedures. The rules regarding appointment and compensation (including salary and fringe benefits) as they relate to appointments of persons to those positions shall be the same as those applicable to the class of those positions. The action of the majority of the judges and the resolution of the board of supervisors adjusting those positions shall designate the class title or titles and number of positions to be added to each respective class. Any adjustment made pursuant to this subdivision shall be effective on adoption of the resolution by the board of supervisors and shall remain in effect only until January 1 of the second year following the year in which this subdivision becomes effective, unless earlier ratified by the Legislature.

SEC. 4. Section 74370 of the Government Code is amended to read:

74370. (a) The hereinafter enumerated classes of positions in the marshal's office of San Diego County are deemed to be equivalent in job, salary level, and fringe benefit level to certain classes in the service of the County of San Diego and whenever the salary and fringe benefit level of a class in the service of the County of San Diego is adjusted by the board of supervisors, the salary and fringe benefit level of the equivalent class in the marshal's office shall be adjusted in the same amount, effective on the same date.

The equivalent classes are as follows:

Marshal class	County class
Assistant marshal	Assistant sheriff
Captain	Deputy sheriff—captain
Lieutenant	Deputy sheriff—lieutenant
Sergeant	Deputy sheriff—sergeant
Deputy marshal	Deputy sheriff
Court service officer	Corrections deputy sheriff
Field service officer	Revenue and recovery officer trainee
Legal procedures clerk III	Legal procedures clerk III
Legal procedures clerk II	Legal procedures clerk II
Legal procedures clerk I	Legal procedures clerk I
Senior typist	Senior clerk-typist
Administrative assistant III	Administrative assistant III
Administrative assistant II	Administrative assistant II
Administrative assistant I	Administrative assistant I
Administrative trainee	Administrative trainee

Accounting technician	Accounting technician
Senior systems analyst	Senior systems analyst
Associate systems analyst	Associate systems analyst
Assistant systems analyst	Assistant systems analyst
Department computer specialist III	Department computer specialist III
Department computer specialist II	Department computer specialist II
Department computer specialist I	Department computer specialist I
Senior applications engineer	Senior applications engineer
Applications engineer I	Applications engineer I
Applications engineer II	Applications engineer II
Administrative secretary III	Administrative secretary III
Administrative secretary II	Administrative secretary II
Administrative secretary I	Administrative secretary I
Administrative services manager I	Administrative services manager
Administrative services manager II	Administrative services manager
Administrative services manager III	Administrative services manager
Supervising legal services clerk	Supervising legal services clerk
Radio trainee	Radio trainee
Emergency services dispatcher	Emergency services dispatcher

(b) In addition to the salary provided in this article, officers, deputies, and other attachés of the marshal's office shall receive, and they shall be entitled to, the same number of holidays, leaves of absence, retirement benefits, deferred compensation benefits, and all other fringe benefits as are now or may hereafter be provided for the specified comparable employees of the County of San Diego.

For purposes of providing the fringe benefits specified in this section, each class in the marshal's office shall receive benefits equal to those of the comparable class in the service of the County of San Diego as specified in this section. The marshal shall receive the same fringe benefits received by the classification of Chief Probation Officer of the County of San Diego. However, all officers, deputies, and other attachés of the marshal's office shall be eligible to enroll in the dental and vision group insurance plans sponsored by the County of San Diego.

The purpose and intent of this subdivision is to provide all marshal's personnel with any and all fringe benefits, but no more than those, which are available to their comparable classes in the service of the County of San Diego, as specified in this section. Whenever action or approval by the chief administrative officer or the county personnel director is required for a county benefit, it shall be taken or given as to comparable marshal's employees, by the marshal, or as to the marshal by the majority of the judges or their designees. Changes in fringe benefits shall be effective on the same date as those for employees of the County of San Diego in the specified comparable classes. The marshal may adopt rules for the conduct of, and personnel privileges to be afforded to, marshal employees, excluding fringe benefits.

SEC. 4.1. Section 74370 of the Government Code is amended to read:

74370. (a) The hereinafter enumerated classes of positions in the marshal's office of San Diego County are deemed to be equivalent in job, salary level, and fringe benefit level to certain classes in the service of the County of San Diego and whenever the salary and fringe benefit level of a class in the service of the County of San Diego is adjusted by the board of supervisors, the salary and fringe benefit level of the equivalent class in the marshal's office shall be adjusted in the same amount, effective on the same date.

The equivalent classes are as follows:

Marshal class	County class
Assistant marshal	Assistant sheriff
Captain	Deputy sheriff—captain
Lieutenant	Deputy sheriff—lieutenant
Sergeant	Deputy sheriff—sergeant
Deputy marshal	Deputy sheriff
Court service officer	Corrections deputy sheriff
Field service officer	Revenue and recovery officer trainee
Legal procedures clerk III	Legal procedures clerk III
Legal procedures clerk II	Legal procedures clerk II
Legal procedures clerk I	Legal procedures clerk I
Senior typist	Senior clerk-typist
Administrative assistant III	Administrative assistant III
Administrative assistant II	Administrative assistant II
Administrative assistant I	Administrative assistant I
Administrative trainee	Administrative trainee
Accounting technician	Accounting technician
Senior systems analyst	Senior systems analyst

Associate systems analyst	Associate systems analyst
Assistant systems analyst	Assistant systems analyst
Department computer specialist III	Department computer specialist III
Department computer specialist II	Department computer specialist II
Department computer specialist I	Department computer specialist I
Senior applications engineer	Senior applications engineer
Applications engineer I	Applications engineer I
Applications engineer II	Applications engineer II
Administrative secretary III	Administrative secretary III
Administrative secretary II	Administrative secretary II
Administrative secretary I	Administrative secretary I
Administrative services manager I	Administrative services manager
Administrative services manager II	Administrative services manager
Administrative services manager III	Administrative services manager
Supervising legal services clerk	Supervising legal services clerk
Radio trainee	Radio trainee
Emergency services dispatcher	Emergency services dispatcher
Departmental LAN analyst III	Departmental LAN analyst III
EDP systems manager	EDP systems manager

(b) In addition to the salary provided in this article, officers, deputies, and other attachés of the marshal's office shall receive, and they shall be entitled to, the same number of holidays, leaves of absence, retirement benefits, deferred compensation benefits, and all other fringe benefits as are now or may hereafter be provided for the specified comparable employees of the County of San Diego.

For purposes of providing the fringe benefits specified in this section, each class in the marshal's office shall receive benefits equal to those of the comparable class in the service of the County of San Diego as specified in this section. The marshal shall receive the same fringe benefits received by the classification of Chief Probation Officer of the County of San Diego. However, all officers, deputies, and other attachés of the marshal's office shall be eligible to enroll in the dental and vision group insurance plans sponsored by the County of San Diego.

The purpose and intent of this subdivision is to provide all marshal's personnel with any and all fringe benefits, but no more than those, which are available to their comparable classes in the service of the County of San Diego, as specified in this section. Whenever action or approval by the chief administrative officer or the county personnel director is required for a county benefit, it shall be taken or given as to comparable marshal's employees, by the marshal, or as to the marshal by the majority of the judges or their designees. Changes in fringe benefits shall be effective on the same date as those for employees of the County of San Diego in the specified comparable classes. The marshal may adopt rules for the conduct of, and personnel privileges to be afforded to, marshal employees, excluding fringe benefits.

SEC. 4.5. All costs associated with the court employee salaries and benefits provided by this act shall be paid solely from funds already available to the courts affected for the 1998–99 fiscal year and thereafter available pursuant to the trial court funding process.

SEC. 5. Section 3.5 of this bill incorporates amendments to Section 74368 of the Government Code proposed by both this bill and SB 1825. 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 74368 of the Government Code, and (3) this bill is enacted after SB 1825, in which case Section 74368 of the Government Code, as amended by Section 3 of this bill, shall remain operative only until the operative date of SB 1825, at which time Section 3.5 of this bill shall become operative.

SEC. 6. Section 4.1 of this bill incorporates amendments to Section 74370 of the Government Code proposed by both this bill and SB 1825. 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 74370 of the Government Code, and (3) this bill is enacted after SB 1825, in which case Section 74370 of the Government Code, as amended by Section 4 of this bill, shall remain operative only until the operative date of SB 1825, at which time Section 4.1 of this bill shall become operative.

SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district 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.

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 adequate staffing for the courts of San Diego County, it is necessary that this act take effect immediately.

CHAPTER 919

An act to amend Sections 12401.5 and 12409 of the Insurance Code, relating to insurance.

[Approved by Governor September 28, 1998. Filed with Secretary of State September 28, 1998.]

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

SECTION 1. Section 12401.5 of the Insurance Code is amended to read:

12401.5. As a further aid to uniform administration of rate regulatory laws of this state, the commissioner may prescribe by reasonable rules and regulations:

(a) For the annual reporting of financial data relating to the aggregate economic performance of all title insurance entities conducting the business of title insurance in this state. That data, if required, shall be for the purpose of determining the industry financial experience for the reporting year and shall reflect the after-tax rate of return on total capital, including investment income and realized and unrealized capital gains, from whatever source attributable to operations in this state.

(b) A statistical plan, reasonably adapted to each of the rating systems in use within the state. Any plan may be modified from time to time by the commissioner and shall be used thereafter by each title insurer in the reporting of data required by the plan, so that the experience of all title insurers is available to the commissioner on an annual basis. The commissioner, through regulations, shall prescribe the form and detail of the financial data to be submitted and the time period the data shall cover. In promulgating the plan, the commissioner may give due consideration to the rating systems in use and, in order that the plan may be as uniform as is practicable among the several states, to the rules and to the form of the plan used for these rating systems in other states. Every licensed title insurer in the state shall be required to record and report data directly to the commissioner. The commissioner shall designate one or more advisory organizations to assist in the development of the statistical plan and to further assist in gathering data and making compilations thereof, and these compilations shall be made available, subject to reasonable rules adopted by the commissioner, to title insurers and advisory organizations.

(c) No statistical plan or modifications thereto, or rules or regulations pertaining thereto, shall be adopted or implemented absent compliance with the provisions of Article 5 (commencing with Section 11346) of Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code, except that any plan, rule, or regulation shall not become effective for a period of 120 days following its adoption, and any plan, rule, or regulation shall be deemed to be a regulation required to be filed with the Secretary of State for purposes of Article 5 (commencing with Section 11346) of Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code.

(d) Data gathered under the statistical plan may be used in conjunction with analytical input from an industry advisory organization to generate statistical information for use in reviewing and evaluating individual rate filings by title insurers pursuant to the standards set forth in Section 12401.3. However, no statistical plan or modifications thereto, or rules or regulations pertaining thereto, shall do any of the following:

(1) Serve as the basis for an assessment not otherwise authorized by law.

(2) Conflict with the purpose and express intent of Section 12401.

(3) Fix, determine, or in any way impair competitive rating or the free market.

(e) This section shall not require a title insurer to refile an existing rate. However, this section shall apply to the filing of a changed or otherwise modified rate, pursuant to the regulations adopted to implement this chapter.

SEC. 2. Section 12409 of the Insurance Code is amended to read:

12409. (a) Every title insurer, controlled escrow company, and underwritten title company which pays any commission or which makes any unlawful rebate in violation of this article shall be liable to the people of California for five times the amount of that commission or unlawful rebate, the amount thereof to be recovered by the commissioner pursuant to Section 12976. In addition to, or in lieu of, any other penalty that may be imposed under this code, the commissioner may, after a hearing, issue an order to restrict or suspend the certificate of authority of any title insurer or controlled escrow company or the license of any underwritten title company. The commissioner may restrict or suspend the certificate of authority or license on a statewide basis or in specified counties.

(b) In no event shall the total or aggregate amount recovered by the commissioner from a title insurer, controlled escrow company, or underwritten title company pursuant to this section be less than five thousand dollars ($5,000).

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

or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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

SEC. 4. This act shall become operative only if Senate Bill 1683 of the 1997–98 Regular Session is enacted and becomes effective on or before January 1, 1999.

CHAPTER 920

An act to amend Sections 8922, 8925, and 8927 of the Education Code, relating to teenage pregnancy prevention.

[Approved by Governor September 28, 1998. Filed with Secretary of State September 28, 1998.]

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

SECTION 1. Section 8922 of the Education Code is amended to read:

8922. Except as provided in Section 8927, this chapter shall remain in effect only until July 1, 2001, and as of that date is repealed, unless a later enacted statute, that is enacted before July 1, 2001, deletes or extends that date.

SEC. 2. Section 8925 of the Education Code is amended to read:

8925. (a) The Legislature hereby establishes the Teenage Pregnancy Prevention Grant Program designed for pupils in elementary and secondary schools.

(b) The superintendent shall award grants based upon the recommendations of the council.

(c) Grants shall be awarded for a period not to exceed five years of program operation.

(d) Grant amounts awarded by the superintendent, in consultation with the council, shall be based on the benchmark of two hundred dollars ($200) per youth, per year. However, each grant amount shall be determined based on the individual program, taking into account the following factors:

(1) The number of youths served.

(2) The kinds of support and educational services provided to the youths.

(3) The number of paid personnel and consultants necessary for the program.

(4) The training costs for the providers.

(5) Printing and promotion costs.

(6) Evaluation costs.

(7) Other direct costs, such as insurance, telephone, space, and photocopying.

(8) Whether parents or guardians are included in the grant.

(e) Grants may include one-time startup costs.

(f) Startup and ongoing grant awards may be used for, among other things, purchasing equipment and supplies, hiring staff, designing a program evaluation, or hiring a consultant.

(g) All local programs funded through the Teenage Pregnancy Prevention Grant Program shall:

(1) Be modeled after existing strategies designed for pupils in elementary and secondary schools that have been proven effective in delaying the onset of sexual activity and reducing the incidence of pregnancy among schoolage youth. The best method for an applicant for an initial or subsequent grant to show effectiveness is through presentation of persuasive evaluation data for the model or existing program. Examples of strategies found to be effective in delaying the onset of sexual activity and reducing pregnancy among schoolage youth include utilizing case management, providing age appropriate health education including abstinence education, increasing the sense of a positive future, raising self-esteem, and providing opportunity for improving decisionmaking and goal-setting skills.

(2) Have demonstrated readiness to begin operation of a program or expand an existing teen pregnancy prevention program.

(h) To the extent possible, in awarding grants the superintendent shall give consideration to program applicants that meet one or more of the following criteria:

(1) Are located in counties with the highest teenage birthrates, or are located in geographical areas defined by ZIP Codes in which there are high teenage birthrates.

(2) Will target youth before they become sexually active.

(3) Will target youth with demonstrated risk factors, including youth living in poverty, youth that have low basic skills and academic achievement, youth that have siblings or a parent who was a teenage parent, youth that engage in multi-high risk behaviors such as alcohol use, drug use, and sexual activity, youth having low self-esteem, youth participating in sexual activity with adult men, and youth that have been sexually victimized.

(4) Are programs that are age-appropriate, and culturally and community sensitive for the target population.

SEC. 3. Section 8927 of the Education Code is amended to read:

8927. (a) The Legislature finds and declares that an evaluation of the Teenage Pregnancy Prevention Grant Program is both desirable and necessary, and, accordingly, requires all of the following:

(1) No later than October 1, 2001, each local educational agency that receives a grant shall submit a report to the superintendent that includes:

(A) An assessment of the effectiveness of that local educational agency in achieving stated goals, including reducing teenage birthrates, delaying sexual activity, and increasing high school completion rates.

(B) Problems encountered in the design and operation of the grant program plan, including identification of any federal, state, or local statute or regulation that impedes program implementation.

(C) Client and practitioner satisfaction.

(2) The superintendent shall contract for an independent evaluation of the effectiveness of funds awarded under this chapter in assisting local educational agencies in implementing the Teenage Pregnancy Prevention Grant Program. No later than April 1, 2002, the superintendent shall submit to the Governor and the Legislature the results of the evaluation, and a summary of the reports submitted to the superintendent pursuant to subdivision (a).

(1) The evaluation shall focus on youth education, health, and social measures, as appropriate, including, but not limited to, birthrates, delayed sexual activity, school attendance, academic performance, dropout rates, pupil grades, birth weights, self-esteem, child protective services referrals, family functioning, and school staff and administration participation.

(2) Additional independent evaluations may be conducted by the superintendent subject to additional funding being made available for purposes of this chapter in subsequent fiscal years.

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

CHAPTER 921

An act to amend Section 9250.19 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 28, 1998. Filed with Secretary of State September 28, 1998.]

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

SECTION 1. Section 9250.19 of the Vehicle Code is amended to read:

9250.19. (a) (1) In addition to any other fees specified in this code and the Revenue and Taxation Code, upon the adoption of a resolution pursuant to this subdivision by any county board of supervisors, a fee of one dollar ($1) shall be paid at the time of registration, renewal, or supplemental application for apportioned registration pursuant to Article 4 (commencing with Section 8050) of Chapter 4 of every vehicle registered to an address within that

county except those expressly exempted from payment of registration fees. The fees, after deduction of the administrative costs incurred by the department in carrying out this section, shall be paid quarterly to the Controller.

(2) A resolution adopted pursuant to paragraph (1) shall include findings as to the purpose of, and the need for, imposing the additional registration fee, and shall identify the date after which the fee shall no longer be imposed.

(b) Notwithstanding Section 13340 of the Government Code, the money paid to the Controller pursuant to subdivision (a) is continuously appropriated, without regard to fiscal years, for disbursement by the Controller to each county that has adopted a resolution pursuant to subdivision (a), based upon the number of vehicles registered, or whose registration is renewed, to an address within that county, or supplemental application for apportioned registration, and, upon appropriation by the Legislature, for the administrative costs of the Controller incurred under this section.

(c) Money allocated to a county pursuant to subdivision (b) shall be expended exclusively to fund programs that enhance the capacity of local law enforcement to provide automated mobile and fixed location fingerprint identification of individuals who may be involved in driving under the influence of alcohol or drugs in violation of Section 23152 or 23153, or vehicular manslaughter in violation of Section 191.5 of the Penal Code or subdivision (c) of Section 192 of the Penal Code, or any combination of those and other vehicle-related crimes, and other crimes committed while operating a motor vehicle.

(d) The data from any program funded pursuant to subdivision (c) shall be made available by the local law enforcement agency to any local public agency that is required by law to obtain a criminal history background of persons as a condition of employment with that local public agency. A local law enforcement agency that provides the data may charge a fee to cover its actual costs in providing that data.

(e) (1) No money collected pursuant to this section shall be used to offset a reduction in any other source of funds for the purposes authorized under this section.

(2) Funds collected pursuant to this section, upon recommendation of local or regional Remote Access Network Boards to the Board of Supervisors, shall be used exclusively for the purchase, by competitive bidding procedures, and the operation of equipment which is compatible with the Department of Justice's Cal-ID master plan, as described in Section 11112.2 of the Penal Code, and the equipment shall interface in a manner that is in compliance with the requirement described in the Criminal Justice Information Services, Electronic Fingerprint Transmission Specification, prepared by the Federal Bureau of Investigation and dated August 24, 1995.

(f) The fee imposed under this section shall remain in effect only for a period of five years from the date that the actual collection of the fee commences, unless a later enacted statute deletes or extends that period.

CHAPTER 922

An act to amend Section 12076 of the Penal Code, relating to firearms.

[Approved by Governor September 28, 1998. Filed with Secretary of State September 28, 1998.]

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

SECTION 1. Section 12076 of the Penal Code is amended to read:

12076. (a) (1) Before January 1, 1998, the department shall determine the method by which a dealer shall submit firearm purchaser information to the department and the information shall be in one of the following formats:

(A) Submission of the register described in Section 12077.

(B) Electronic or telephonic transfer of the information contained in the register described in Section 12077.

(2) On or after January 1, 1998, electronic or telephonic transfer, including voice or facsimile transmission, shall be the exclusive means by which purchaser information is transmitted to the department.

(b) (1) Where the register is used, the purchaser of any firearm shall be required to present clear evidence of his or her identity and age, as defined in Section 12071, to the dealer, and the dealer shall require him or her to sign his or her current legal name and affix his or her residence address and date of birth to the register in quadruplicate. The salesperson shall affix his or her signature to the register in quadruplicate as a witness to the signature and identification of the purchaser. Any person furnishing a fictitious name or address or knowingly furnishing any incorrect information or knowingly omitting any information required to be provided for the register and any person violating any provision of this section is guilty of a misdemeanor.

(2) The original of the register shall be retained by the dealer in consecutive order. Each book of 50 originals shall become the permanent register of transactions that shall be retained for not less than three years from the date of the last transaction and shall be available for the inspection of any peace officer, Department of Justice employee designated by the Attorney General, or agent of the federal Bureau of Alcohol, Tobacco, and Firearms upon the presentation of proper identification, but no information shall be

compiled therefrom regarding the purchasers or other transferees of firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person.

(3) Two copies of the original sheet of the register, on the date of the application to purchase, shall be placed in the mail, postage prepaid, and properly addressed to the Department of Justice in Sacramento.

(4) If requested, a photocopy of the original shall be provided to the purchaser by the dealer.

(5) If the transaction is one conducted pursuant to Section 12082, a photocopy of the original shall be provided to the seller by the dealer, upon request.

(c) (1) Where the electronic or telephonic transfer of applicant information is used, the purchaser shall be required to present clear evidence of his or her identity and age, as defined in Section 12071, to the dealer, and the dealer shall require him or her to sign his or her current legal name to the record of electronic or telephonic transfer. The salesperson shall affix his or her signature to the record of electronic or telephonic transfer as a witness to the signature and identification of the purchaser. Any person furnishing a fictitious name or address or knowingly furnishing any incorrect information or knowingly omitting any information required to be provided for the electronic or telephonic transfer and any person violating any provision of this section is guilty of a misdemeanor.

(2) The record of applicant information shall be transmitted to the Department of Justice in Sacramento by electronic or telephonic transfer on the date of the application to purchase.

(3) The original of each record of electronic or telephonic transfer shall be retained by the dealer in consecutive order. Each original shall become the permanent record of the transaction that shall be retained for not less than three years from the date of the last transaction and shall be provided for the inspection of any peace officer, Department of Justice employee designated by the Attorney General, or agent of the federal Bureau of Alcohol, Tobacco, and Firearms, upon the presentation of proper identification, but no information shall be compiled therefrom regarding the purchasers or other transferees of firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person.

(4) If requested, a copy of the record of electronic or telephonic transfer shall be provided to the purchaser by the dealer.

(5) If the transaction is one conducted pursuant to Section 12082, a copy shall be provided to the seller by the dealer, upon request.

(d) (1) The department shall examine its records, as well as those records that it is authorized to request from the State Department of Mental Health pursuant to Section 8104 of the Welfare and Institutions Code, in order to determine if the purchaser is a person described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(2) To the extent that funding is available, the Department of Justice may participate in the National Instant Criminal Background Check System (NICS), as described in subsection (t) of Section 922 of Title 18 of the United States Code, and, if that participation is implemented, shall notify the dealer and the chief of the police department of the city or city and county in which the sale was made, or if the sale was made in a district in which there is no municipal police department, the sheriff of the county in which the sale was made, that the purchaser is a person prohibited from acquiring a firearm under federal law.

(3) If the department determines that the purchaser is a person described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code, it shall immediately notify the dealer and the chief of the police department of the city or city and county in which the sale was made, or if the sale was made in a district in which there is no municipal police department, the sheriff of the county in which the sale was made, of that fact.

(4) If the department determines that the copies of the register submitted to it pursuant to paragraph (3) of subdivision (b) contain any blank spaces or inaccurate, illegible, or incomplete information, preventing identification of the purchaser or the pistol, revolver, or other firearm to be purchased, or if any fee required pursuant to subdivision (e) is not submitted by the dealer in conjunction with submission of copies of the register, the department may notify the dealer of that fact. Upon notification by the department, the dealer shall submit corrected copies of the register to the department or shall submit any fee required pursuant to subdivision (e), or both, as appropriate, and, if notification by the department is received by the dealer at any time prior to delivery of the firearm to be purchased, the dealer shall withhold delivery until the conclusion of the waiting period described in Sections 12071 and 12072.

(5) If the department determines that the information transmitted to it pursuant to subdivision (c) contains inaccurate or incomplete information preventing identification of the purchaser or the pistol, revolver, or other firearm capable of being concealed upon the person to be purchased, or if the fee required pursuant to subdivision (e) is not transmitted by the dealer in conjunction with transmission of the electronic or telephonic record, the department may notify the dealer of that fact. Upon notification by the department, the dealer shall transmit corrections to the record of electronic or telephonic transfer to the department or shall transmit any fee required pursuant to subdivision (e), or both, as appropriate, and, if notification by the department is received by the dealer at any time prior to delivery of the firearm to be purchased, the dealer shall withhold delivery until the conclusion of the waiting period described in Sections 12071 and 12072.

(e) The Department of Justice may require the dealer to charge each firearm purchaser a fee not to exceed fourteen dollars ($14),

except that the fee may be increased at a rate not to exceed any increase in the California Consumer Price Index as compiled and reported by the California Department of Industrial Relations. The fee shall be no more than is sufficient to reimburse all of the following, and is not to be used to directly fund or as a loan to fund any other program:

(1) (A) The department for the cost of furnishing this information.

(B) The department for the cost of meeting its obligations under paragraph (2) of subdivision (b) of Section 8100 of the Welfare and Institutions Code.

(2) Local mental health facilities for state-mandated local costs resulting from the reporting requirements imposed by Section 8103 of the Welfare and Institutions Code.

(3) The State Department of Mental Health for the costs resulting from the requirements imposed by Section 8104 of the Welfare and Institutions Code.

(4) Local mental hospitals, sanitariums, and institutions for state-mandated local costs resulting from the reporting requirements imposed by Section 8105 of the Welfare and Institutions Code.

(5) Local law enforcement agencies for state-mandated local costs resulting from the notification requirements set forth in subdivision (a) of Section 6385 of the Family Code.

(6) Local law enforcement agencies for state-mandated local costs resulting from the notification requirements set forth in subdivision (c) of Section 8105 of the Welfare and Institutions Code.

(7) For the actual costs associated with the electronic or telephonic transfer of information pursuant to subdivision (c).

(8) The Department of Food and Agriculture for the costs resulting from the notification provisions set forth in Section 5343.5 of the Food and Agricultural Code.

(9) The department for the costs associated with subparagraph (D) of paragraph (2) of subdivision (f) of Section 12072.

The fee established pursuant to this subdivision shall not exceed the sum of the actual processing costs of the department, the estimated reasonable costs of the local mental health facilities for complying with the reporting requirements imposed by paragraph (2) of this subdivision, the costs of the State Department of Mental Health for complying with the requirements imposed by paragraph (3) of this subdivision, the estimated reasonable costs of local mental hospitals, sanitariums, and institutions for complying with the reporting requirements imposed by paragraph (4) of this subdivision, the estimated reasonable costs of local law enforcement agencies for complying with the notification requirements set forth in subdivision (a) of Section 6385 of the Family Code, the estimated reasonable costs of local law enforcement agencies for complying with the notification requirements set forth in subdivision (c) of Section 8105 of the Welfare and Institutions Code imposed by paragraph (6) of this

subdivision, the estimated reasonable costs of the Department of Food and Agriculture for the costs resulting from the notification provisions set forth in Section 5343.5 of the Food and Agricultural Code, and the estimated reasonable costs of the department for the costs associated with subparagraph (D) of paragraph (2) of subdivision (f) of Section 12072.

(f) (1) The Department of Justice may charge a fee sufficient to reimburse it for each of the following but not to exceed fourteen dollars ($14), except that the fee may be increased at a rate not to exceed any increase in the California Consumer Price Index as compiled and reported by the California Department of Industrial Relations:

(A) For the actual costs associated with the preparation, sale, processing, and filing of forms or reports required or utilized pursuant to Section 12078 if neither a dealer nor a law enforcement agency acting pursuant to Section 12084 is filing the form or report.

(B) For the actual processing costs associated with the submission of a Dealers' Record of Sale to the department by a dealer or of the submission of a LEFT to the department by a law enforcement agency acting pursuant to Section 12084 if the waiting period described in Sections 12071, 12072, and 12084 does not apply.

(C) For the actual costs associated with the preparation, sale, processing, and filing of reports utilized pursuant to subdivision (*l*) of Section 12078 or paragraph (18) of subdivision (b) of Section 12071, or clause (i) of subparagraph (A) of paragraph (2) of subdivision (f) of Section 12072, or paragraph (3) of subdivision (f) of Section 12072.

(D) For the actual costs associated with the electronic or telephonic transfer of information pursuant to subdivision (c).

(2) If the department charges a fee pursuant to subparagraph (B) of paragraph (1) of this subdivision, it shall be charged in the same amount to all categories of transaction that are within that subparagraph.

(3) Any costs incurred by the Department of Justice to implement this subdivision shall be reimbursed from fees collected and charged pursuant to this subdivision. No fees shall be charged to the dealer pursuant to subdivision (e) or to a law enforcement agency acting pursuant to paragraph (6) of subdivision (d) of Section 12084 for costs incurred for implementing this subdivision.

(g) All money received by the department pursuant to this section shall be deposited in the Dealers' Record of Sale Special Account of the General Fund, which is hereby created, to be available, upon appropriation by the Legislature, for expenditure by the department to offset the costs incurred pursuant to this section, subparagraph (D) of paragraph (2) of subdivision (f) of Section 12072, and Sections 12289 and 12809.

(h) Where the electronic or telephonic transfer of applicant information is used, the department shall establish a system to be

used for the submission of the fees described in subdivision (e) to the department.

(i) (1) Only one fee shall be charged pursuant to this section for a single transaction on the same date for the sale of any number of firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person or for the taking of possession of those firearms.

(2) In a single transaction on the same date for the delivery of any number of firearms that are pistols, revolvers, or other firearms capable of being concealed upon the person, the department shall charge a reduced fee pursuant to this section for the second and subsequent firearms that are part of that transaction.

(j) Only one fee shall be charged pursuant to this section for a single transaction on the same date for taking title or possession of any number of firearms pursuant to paragraph (18) of subdivision (b) of Section 12071 or subdivision (c) or (i) of Section 12078.

(k) Whenever the Department of Justice acts pursuant to this section as it pertains to firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, the department's acts or omissions shall be deemed to be discretionary within the meaning of the California Tort Claims Act pursuant to Division 3.6 (commencing with Section 810) of Title 1 of the Government Code.

(*l*) As used in this section, the following definitions apply:

(1) "Purchaser" means the purchaser or transferee of a firearm or a person being loaned a firearm.

(2) "Purchase" means the purchase, loan, or transfer of a firearm.

(3) "Sale" means the sale, loan, or transfer of a firearm.

(4) "Seller" means, if the transaction is being conducted pursuant to Section 12082, the person selling, loaning, or transferring the firearm.

CHAPTER 923

An act to add Sections 22203.5, 22363, and 22364 to the Education Code, and to amend Sections 20153, 82023, 82024, and 90001 of, and to add Sections 20096.5, 20152.5, 20191.5, and 84225 to, the Government Code, relating to public retirement system governing boards.

[Approved by Governor September 28, 1998. Filed with Secretary of State September 28, 1998.]

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

SECTION 1. Section 22203.5 is added to the Education Code, to read:

22203.5. (a) All investment transaction decisions made during a closed session pursuant to paragraph (16) of subdivision (c) of Section 11126 of the Government Code shall be by rollcall vote entered into the minutes of that meeting.

(b) The board, within 12 months of the close of an investment transaction or the transfer of system assets for an investment transaction, whichever occurs first, shall disclose and report the investment at a public meeting.

SEC. 2. Section 22363 is added to the Education Code, to read:

22363. No matter involving any vendor or contractor, in their individual or any other capacity, shall be considered during a closed session on any transaction involving the system unless, prior to the closed session, a written disclosure has been submitted by the vendor or contractor of any campaign contributions aggregating two hundred fifty dollars ($250) or more and any gifts aggregating fifty dollars ($50) or more in value that the vendor or contractor has made during the preceding calendar year to any member of the board or any officer or employee of the system. Failure to disclose the campaign contributions and gifts shall provide the basis for disqualification of the contractor or the vendor.

SEC. 3. Section 22364 is added to the Education Code, to read:

22364. (a) During the process leading to an award of any contract by the system, no member of the board or its staff shall knowingly communicate concerning any matter relating to the contract or selection process with any party financially interested in the contract, or an officer or employee of that party, unless the communication is (1) part of the process expressly described in the request for proposal or other solicitation invitation, or (2) part of a noticed board meeting, or (3) as provided in subdivision (c). Any applicant or bidder who knowingly participates in a communication that is prohibited by this paragraph shall be disqualified from the contract award.

(b) During the evaluation of any prospective investment transaction, no party who is financially interested in the transaction, or an officer or employee of that party, may knowingly communicate with any board member concerning any matter relating to the transaction or its evaluation, unless the financially interested party discloses the content of the communication in a writing addressed and submitted to the executive officer and the board prior to the board's action on the prospective transaction. This subdivision shall not apply to communications that are part of a noticed board meeting, or as provided in subdivision (c).

(1) The writing shall disclose the date and location of the communication, and the substance of the matters discussed. The board shall prescribe other procedures concerning this disclosure.

(2) Any board member who participates in a communication subject to this subdivision shall also have the obligation to disclose the communication to the executive officer and board, prior to the

board's action on the prospective transaction. The board shall prescribe procedures for this disclosure, including procedures to apply to board members who fail to disclose communications as required by this subdivision.

(3) Consistent with its fiduciary duties, the board shall determine the appropriate remedy for any knowing failure of a financially interested party to comply with this subdivision including, but not limited to, outright rejection of the prospective investment transaction, reduction in fee income, or any other sanction.

(4) The communications disclosed under this subdivision shall be made public, either at the open meeting of the board in which the transaction is considered, or if in closed session, upon public disclosure of any closed session votes concerning the investment transaction.

(c) The procedures and prohibitions prescribed by this section shall not apply to:

(1) Communications that are incidental, exclusively social, and do not involve the system or its business, or the board or staff member's role as a system official.

(2) Communications that do not involve the system or its business and that are within the scope of the board or staff member's private business or public office wholly unrelated to the system.

SEC. 4. Section 20096.5 is added to the Government Code, to read:

20096.5. (a) Candidates for board seats described in subdivision (g) of Section 20090, including incumbent board members running for reelection, shall file campaign statements with the Secretary of State no later than two days before the beginning of the ballot period, as determined by the board for the period ending five days before the beginning of the ballot period, and no later than January 10, for the period ending December 31.

(b) The campaign statements shall contain an itemized report that is prepared on a form prescribed by the Fair Political Practices Commission, with the assistance of the board, that provides the information contained in campaign statements filed under Section 84211 to the extent that that information is applicable to a board election.

(c) The original of a campaign statement shall be filed with the Secretary of State and a copy shall be retained by the executive officer at the board's office in Sacramento and is a public record.

(d) All campaign statements filed under this section shall be signed and verified by the filer. The verification shall state that the filer has used reasonable diligence in its preparation, and that to the best of his or her knowledge it is true and complete. Any person who violates the requirements of this section shall be subject to a civil or administrative action brought by the Fair Political Practices Commission or other agency of concurrent jurisdiction pursuant to Title 9 (commencing with Section 81000).

SEC. 5. Section 20152.5 is added to the Government Code, to read:

20152.5. No matter involving any vendor or contractor in their individual or any other capacity shall be considered during a closed session on any transaction involving the system unless, prior to the closed session, a written disclosure has been submitted by the vendor or contractor of any campaign contributions aggregating two hundred fifty dollars ($250) or more and any gifts aggregating fifty dollars ($50) or more in value that the vendor or contractor has made during the preceding calendar year to any member of the board or any officer or employee of the system. Failure to disclose the campaign contributions and gifts shall provide the basis for disqualification of the contractor or the vendor.

SEC. 6. Section 20153 of the Government Code is amended to read:

20153. (a) During the process leading to an award of any contract by the system, no member of the board or its staff shall knowingly communicate concerning any matter relating to the contract or selection process with any party financially interested in the contract or an officer or employee of that party, unless the communication is (1) part of the process expressly described in the request for proposal or other solicitation invitation, or (2) part of a noticed board meeting, or (3) as provided in subdivision (c). Any applicant or bidder who knowingly participates in a communication that is prohibited by this subdivision shall be disqualified from the contract award.

(b) During the evaluation of any prospective investment transaction, no party who is financially interested in the transaction, or an officer or employee of that party, may knowingly communicate with any board member concerning any matter relating to the transaction or its evaluation, unless the financially interested party discloses the content of the communication in a writing addressed and submitted to the executive officer and the board prior to the board's action on the prospective transaction. This subdivision shall not apply to communications that are part of a noticed board meeting, or as provided in subdivision (c).

(1) The writing shall disclose the date and location of the communication, and the substance of the matters discussed. The board shall prescribe other procedures concerning this disclosure.

(2) Any board member who participates in a communication subject to this subdivision shall also have the obligation to disclose the communication to the executive officer and board, prior to the board's action on the prospective transaction. The board shall prescribe procedures for this disclosure, including procedures to apply to board members who fail to disclose communications as required by the subdivision.

(3) Consistent with its fiduciary duties, the board shall determine the appropriate remedy for any knowing failure of a financially

interested party to comply with this subdivision including, but not limited to, outright rejection of the prospective investment transaction, reduction in fee received, or any other sanction.

(4) The communications disclosed under this subdivision shall be made public, either at the open meeting of the board in which the transaction is considered, or if in closed session, upon public disclosure of any closed session votes concerning the investment transaction.

(c) The procedures and prohibitions prescribed by this section shall not apply to:

(1) Communications that are incidental, exclusively social, and do not involve the system or its business, or the board or staff member's role as a system official.

(2) Communications that do not involve the system or its business and that are within the scope of the board or staff member's private business or public office wholly unrelated to the system.

SEC. 7. Section 20191.5 is added to the Government Code, to read:

20191.5. (a) All investment transaction decisions made during a closed session pursuant to paragraph (16) of subdivision (c) of Section 11126 shall be by rollcall vote entered into the minutes of that meeting.

(b) The board, within 12 months of the close of an investment transaction or the transfer of system assets for an investment transaction, whichever occurs first, shall disclose and report the investment at a public meeting.

SEC. 8. Section 82023 of the Government Code is amended to read:

82023. "Elective office" means any state, regional, county, municipal, district or judicial office which is filled at an election. "Elective office" also includes membership on a county central committee of a qualified political party, and members elected to the Board of Administration of the Public Employees' Retirement System.

SEC. 9. Section 82024 of the Government Code is amended to read:

82024. "Elective state office" means the office of Governor, Lieutenant Governor, Attorney General, Insurance Commissioner, Controller, Secretary of State, Treasurer, Superintendent of Public Instruction, Member of the Legislature, member elected to the Board of Administration of the Public Employees' Retirement System, and member of the State Board of Equalization.

SEC. 10. Section 84225 is added to the Government Code, to read:

84225. (a) For the purposes of this section only, "board" means the Board of Administration of the Public Employees' Retirement System, as established under Article 1 (commencing with Section 20090) of Chapter 2 of Part 3 of Division 5 of Title 2 of the Government Code.

(b) Except as provided in this section, the provisions of this article do not apply to candidates for the board, including incumbent board members running for reelection, as such candidates are described in subdivision (g) of Section 20090.

(c) Candidates for board seats described in subdivision (g) of Section 20090, including incumbent board members running for reelection, shall file campaign statements with the Secretary of State no later than two days before the beginning of the ballot period, as determined by the board, for the period ending five days before the beginning of the ballot period, and no later than January 10, for the period ending December 31.

(1) The campaign statements shall contain an itemized report that is prepared on a form prescribed by the commission, with the assistance of the board, that provides the information contained in campaign statements required under Section 84211 to the extent that the information is applicable to a board election.

(2) The original of a campaign statement shall be filed with the Secretary of State and a copy shall be retained at the board's office in Sacramento and is a public record.

SEC. 11. Section 90001 of the Government Code is amended to read:

90001. Audits and investigations shall be made pursuant to Section 90000 with respect to the reports and statements of:

(a) Each lobbying firm and each lobbyist employer who employs one or more lobbyists shall be subject to an audit on a random basis with these lobbying firms or lobbyist employers having a 25-percent chance of being audited. When a lobbying firm or lobbyist employer is audited, the individual lobbyists who are employed by the lobbying firm or the lobbyist employer shall also be audited.

(b) Each statewide, Supreme Court, court of appeal, or Board of Equalization candidate in a direct primary or general election for whom it is determined that twenty-five thousand dollars ($25,000) or more in contributions have been raised or twenty-five thousand dollars ($25,000) or more in expenditures have been made, whether by the candidate or by a committee or committees controlled by the candidate or whose participation in the direct primary or general election is primarily in support of his or her candidacy. Each statewide candidate whose contributions and expenditures are less than twenty-five thousand dollars ($25,000) shall be subject to an audit on a random basis of 10 percent of the number of such candidates.

(c) Each candidate for the Legislature or superior court judge in a direct primary or general election shall be subject to audit by random selection if it is determined that fifteen thousand dollars ($15,000) or more in contributions have been received or fifteen thousand dollars ($15,000) or more in expenditures have been made, whether by the candidate or by a committee or committees controlled by the candidate or primarily supporting his or her

candidacy. Random selection shall be made of 25 percent of the Senate districts, 25 percent of the Assembly districts and 25 percent of the judicial offices contested in an election year.

(d) Each candidate for the Legislature in a special primary or special runoff election for whom it is determined that fifteen thousand dollars ($15,000) or more in contributions have been raised or fifteen thousand dollars ($15,000) or more in expenditures have been made, whether by the candidate or by a committee or committees controlled by the candidate or primarily supporting his or her candidacy.

(e) Each controlled committee of any candidate who is being audited pursuant to subdivision (b), (c), or (d).

(f) Each committee, other than a committee specified in subdivision (c) of Section 82013, primarily supporting or opposing a candidate who is being audited pursuant to subdivision (b), (c), or (d) if it is determined that the committee has expended more than ten thousand dollars ($10,000).

(g) Each committee, other than a committee specified in subdivision (c) of Section 82013, whose participation is primarily in support of or in opposition to a state measure or state measures if it is determined that the committee has expended more than ten thousand dollars ($10,000) on such measure or measures.

(h) Each committee, other than a committee defined in subdivision (c) of Section 82013, a controlled committee or a committee primarily supporting or opposing a state candidate or measure, if it is determined that the committee has raised or expended more than ten thousand dollars ($10,000) supporting or opposing state candidates or state measures during any calendar year, except that if the commission determines from an audit report that a committee is in substantial compliance with the provisions of the act, the committee thereafter shall be subject to an audit on a random basis with each such committee having a 25-percent chance of being audited.

(i) (1) With respect to local candidates and their controlled committees, the commission shall promulgate regulations which provide a method of selection for these audits.

(2) With respect to candidates for the Board of Administration of the Public Employees' Retirement System, the commission shall promulgate regulations that provide a method for selection of these audits. The Public Employees' Retirement System shall reimburse the commission for all reasonable expenses incurred pursuant to this section.

(j) In accordance with subdivisions (a), (b), (c), and (h), the Fair Political Practices Commission shall select by lot the persons or districts to be audited on a random basis. For campaign audits the selection shall be made in public after the last date for filing the first report or statement following the general or special election for which the candidate ran, or following the election at which the

measure was adopted or defeated. For lobbying firm and lobbyist employer audits, the selection shall be made in public in February of odd-numbered years.

SEC. 12. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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

SEC. 13. The Legislature finds and declares that the provisions of this act further the purposes of the Political Reform Act of 1974 within the meaning of subdivision (a) of Section 81012 of the Government Code.

CHAPTER 924

An act to amend Sections 17550.3, 17550.5, 17550.9, 17550.10, 17550.13, 17550.14, 17550.15, 17550.16, 17550.17, 17550.19, 17550.20, 17550.21, 17550.23, 17550.24, 17550.30, 17550.34, 17550.37, 17550.38, 17550.41, 17550.43, 17550.44, 17550.46, 17550.53, 17550.57, 17550.58, and 17550.59 of, to repeal Sections 17550.12, 17550.32, and 17550.33 of, and to repeal and add Section 17550.47 of, the Business and Professions Code, and to amend Section 3.5 of Chapter 1123 of the Statutes of 1994, relating to travel, and making an appropriation therefor.

[Approved by Governor September 28, 1998. Filed with Secretary of State September 28, 1998.]

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

SECTION 1. Section 17550.3 of the Business and Professions Code is amended to read:

17550.3. "Passenger" is a person on whose behalf money or other consideration has been given or is to be given to another, including another member of the same partnership, corporation, joint venture, association, organization, group, or other entity, for air or sea transportation, other travel services, or both, for that person.

SEC. 2. Section 17550.5 of the Business and Professions Code is amended to read:

17550.5. "Ticket or voucher" means a writing that is itself good and sufficient to obtain the entire air or ocean transportation, or travel services, which the passenger has purchased.

SEC. 3. Section 17550.9 of the Business and Professions Code is amended to read:

17550.9. "Travel services" includes, but is not limited to, lodging, surface transportation, transfers, tours, meals, guides, baggage transfer, sightseeing, recreational activities, vehicle rental, or other travel-related services, however denominated, including, but not limited to, travel certificates, registration fees, and processing fees. "Travel services" does not include travel services rendered by providers of lodging such as a hotel, motel, or similar lodging establishment where the provider of lodging supplies only that service.

SEC. 4. Section 17550.10 of the Business and Professions Code is amended to read:

17550.10. "Travel certificate" means a writing that represents the holder is entitled to air or sea transportation or travel services, to a discount or reduced price for that transportation or those travel services, or to purchase that transportation or those travel services from a specified source, whether or not the holder is required to pay additional money or fulfill any requirements in order to utilize the certificate.

SEC. 5. Section 17550.12 of the Business and Professions Code is repealed.

SEC. 6. Section 17550.13 of the Business and Professions Code is amended to read:

17550.13. (a) A seller of travel shall not receive any money or other valuable consideration in payment for air or sea transportation or other travel services offered by the seller of travel unless at the time of or prior to the receipt of payment the seller of travel first furnishes to the person making that payment written materials conspicuously setting forth the following information:

(1) The name and business address and telephone number of the seller of travel.

(2) The total amount to be paid by or on behalf of the passenger, amount paid to date, the date of any future payment, the purpose of the payment made, and an itemized statement of the balance due, if any.

(3) The name of the provider of the air or sea transportation, and the date, time, and place of each departure, or the circumstances under which the date, time, and place of departure will be determined.

(4) All terms and conditions relating to the air or sea transportation or travel services being purchased by the passenger, including cancellation conditions. An air carrier's or an ocean carrier's standard contract of carriage is not required to be disclosed

prior to the seller of travel receiving any money or other valuable consideration.

There is no violation of this subdivision if both of the following occur:

(A) Compliance was rendered impossible as a direct result of an unforeseen condition beyond the control of the seller of travel.

(B) The seller of travel obtains from each passenger written acknowledgment that the passenger has not received disclosure of the terms and conditions required by this section.

(5) A clear and conspicuous statement that upon cancellation of the transportation or travel services, where the passenger is not at fault and has not canceled in violation of any terms and conditions previously clearly and conspicuously disclosed to and agreed to by the passenger, all sums paid to the seller of travel for services not provided will be promptly paid to the passenger, unless the passenger otherwise advises the seller of travel in writing, after cancellation.

(6) If the seller of travel is required by this article to have a trust account or bond, a clear and conspicuous disclosure stating: "California law requires certain sellers of travel to have a trust account or bond. This business has [a trust account] or [a bond issued by (company) in the amount of ($X)]."

(7) If the seller of travel is a participant in the Travel Consumer Restitution Fund, a clear and conspicuous notice of the passenger's right to make a claim on that fund. The notice shall include a description of the losses covered, the method for making a claim, the time limit within which the claim shall be made, and the amount which may be claimed.

(8) If the seller of travel is a participant in a Consumer Protection Deposit Plan that meets the criteria set forth in subdivision (b) of Section 17550.16, a clear and conspicuous notice of the passenger's right to make a claim on the plan. That notice shall include a description of the losses covered, the method for making a claim, the time limit within which the claim shall be made, and the amount which may be claimed.

(9) If the seller of travel is a participant in a Consumer Protection Escrow Plan that meets the criteria set forth in subdivision (c) of Section 17550.16, a clear and conspicuous notice of the passenger's right to make a claim on the plan. That notice shall include a description of the losses covered, the method for making a claim, the time limit within which the claim shall be made, and the amount that may be claimed.

(10) If the seller of travel is not a participant, a clear and conspicuous disclosure that the seller of travel is not a participant in the Travel Consumer Restitution Fund. That disclosure shall be made both orally and in writing.

(11) If the seller of travel has its principal place of business in California and the passenger is located outside California, a clear and

conspicuous disclosure that the transaction is not covered by the Travel Consumer Restitution Fund. That disclosure shall be made both orally and in writing.

(b) If a seller of travel offers, sells, provides, or distributes a travel certificate as defined in Section 17550.10 and any passenger payment is nonrefundable, in whole or in part, the seller of travel shall obtain the written acknowledgment of that limitation from the end user prior to, or at the time of, receipt of any money or other valuable consideration.

(c) Notwithstanding any other provision of this section, if money or other valuable consideration is received from a customer to whom the seller of travel has sold air or sea transportation within the preceding 12 months, the disclosures required by this section shall be made within five days of receipt of that money or other valuable consideration.

(d) Notwithstanding any other provision of this section, if money or other valuable consideration is received in payment for air transportation and (1) the seller of travel is an officially appointed agent in good standing of the Airlines Reporting Corporation and (2) the seller of travel forwards the amount paid, without offsetting or reducing the amount forwarded by any amounts due or claimed in connection with any other transaction, to the airline providing the transportation or to the Airlines Reporting Corporation, the disclosures required by this section with respect to that air transportation may be made orally.

SEC. 7. Section 17550.14 of the Business and Professions Code is amended to read:

17550.14. (a) The seller of travel has an obligation either to provide the air or sea transportation or travel services purchased by the passenger, or to make a refund as provided by this section. The seller of travel shall return to the passenger all moneys paid for air or sea transportation or travel services not actually provided to the passenger, within either of the following periods, whichever is earlier:

(1) Thirty days of one of the following dates:

(A) The scheduled date of departure.

(B) The day the passenger requests a refund.

(C) The day of cancellation by the seller of travel.

(2) Three days from the day the seller of travel is first unable to provide the air or sea transportation or travel services.

As used in this section, "unable to provide" includes, but is not limited to, any day on which the passenger's funds are not in the trust account required by Section 17550.15 and subdivision (g) of Section 17750.21, or the funds necessary to provide the passenger's transportation or travel services have been disbursed other than as allowed by Section 17550.15 or subdivision (a) of Section 17550.16.

(b) Where the seller of travel has disbursed the passenger's funds pursuant to paragraph (1), (2), (3), or (4) of subdivision (c) of

Section 17550.15, the seller of travel may, instead of providing a refund, provide to the passenger a written statement accompanied by bank records establishing that the passenger's funds were disbursed as required by those provisions and, if disbursed to a seller of travel, proof of current registration of that seller of travel. A seller of travel who is exempt from the requirements of Section 17550.15 pursuant to subdivision (a) of Section 17550.16 and who is in compliance with subdivision (a) of Section 17550.16 may comply with this section by maintaining and providing to the passenger documentary proof of disbursement in compliance with subdivision (a) of Section 17550.16, and proof of current, registration of the seller of travel to whom the funds were disbursed, which registration shall note that the registered seller of travel either has a trust account in compliance with Section 17550.15, or is exempt from the requirements of Section 17550.15 pursuant to subdivision (b) or (c) of Section 17550.16.

(c) If terms and conditions relating to a refund upon cancellation by the passenger have been disclosed and agreed to by the passenger, and the passenger elects to cancel for any reason other than a seller of travel being unable to provide the air or sea transportation or travel services purchased, the making of a refund in accordance with those terms and conditions shall be deemed to constitute compliance with this section.

(d) Any material misrepresentation by the seller of travel shall be deemed to be a violation of this article and cancellation by the seller of travel, necessitating a refund as required by subdivision (a).

SEC. 8. Section 17550.15 of the Business and Professions Code is amended to read:

17550.15. (a) This section applies to a seller of travel as defined in Section 17550.1.

(b) The seller of travel shall deposit directly into a trust account in a federally insured bank, savings and loan association, or credit union 100 percent of all sums received from any person or entity, including, but not limited to, those payments made in cash, by credit card, or any other method of payment, for air or sea transportation for any person, or for any travel services offered by the seller of travel, and any refunds made by carriers or providers of travel services. This subdivision does not require that a seller of travel establish a separate trust account for each transaction.

(c) The seller of travel shall not in any manner encumber the corpus of the trust account and shall not withdraw money therefrom except as follows:

(1) In partial or full payment to the carrier for transportation, or to the provider of travel services, for the services or transportation purchased by the passenger.

(2) In partial or full payment to the carrier or provider of travel services if payment is made by wire transfer directly to an account of the Airlines Reporting Corporation, or by check or draft paid to the

Airlines Reporting Corporation for the transportation or services contracted for by the passenger.

(3) Upon delivery of all tickets or vouchers necessary for the passenger to obtain from the carrier or provider of travel services the transportation or services purchased by the passenger, at which time the seller of travel may withdraw the portion of the sum paid by the passenger that is due the seller of travel as compensation for sale of the transportation or travel services to that passenger. Tickets or vouchers shall be deemed delivered if personally delivered, turned over to an independent third-party delivery service for regular delivery to the passenger at the address designated by the passenger on the next business day, or deposited in the United States mail with first-class postage prepaid.

(4) Upon full payment to the provider of transportation or travel services, directly to the trust account identified in the registration of another seller of travel to whom the funds are paid, or to another registered seller of travel whose registration states that the other registered seller of travel is exempt pursuant to subdivision (b) or (c) of Section 17550.16 from the requirements of this section, of the total amount that is required by the carrier or provider of transportation or travel services or other registered seller of travel in order to provide the transportation or services purchased by the passenger, at which time the seller of travel may withdraw from the trust account that portion of the sum paid by the passenger which is commission due the seller of travel for sale of the transportation or travel services to that passenger.

(5) To make refunds to the passenger.

(d) Subdivision (c) shall not prevent payment of the interest earned on the trust account to the seller of travel.

(e) The seller of travel shall serve as trustee of the trust accounts required by this article. If an individual person is the seller of travel, the individual person shall be the trustee; if the seller of travel is a corporation, partnership, limited liability company, or other legal entity, a managing partner or partners, or the chief executive officer of the corporation, or executive officer or manager of a limited liability company shall be the trustee. The trustee may designate in writing that an officer or employee may manage the trust account if that officer or employee is under the trustee's supervision and control, and the original of that writing is on file with the Attorney General's office.

(f) (1) Except as otherwise provided in this section, all trust accounts required by this article shall be maintained at a branch of a federally insured bank, savings and loan association, or credit union.

(2) The seller of travel shall file with the Attorney General an irrevocable agreement in writing allowing the Attorney General, a district attorney, or their representatives, upon written request, to examine and obtain copies of all business records, including, but not limited to, those related to the trust account wherever those records

may be, and including, but not limited to, those records relating to any travel business account, or any account used for any travel business transaction, or account to which trust funds have been deposited. The statement shall indicate that the authorization remains in effect as long as the seller of travel, financial institution, or other custodian of records retains records.

(g) Every seller of travel has a fiduciary responsibility with respect to all sums received for transportation or travel services.

(h) The following are deemed to be held in trust for passengers:

(1) All sums received by the seller of travel for transportation or travel services whether or not required to be deposited in an actual trust account and regardless of whether any of these sums were required to be deposited or actually were deposited in a trust account.

(2) All property with which any of the sums described in paragraph (1) has been commingled if any of these sums cannot be identified because of the commingling.

(i) Upon any judicially ordered distribution of any money or property required to be held in trust and after all expenses of distribution approved by the court have been paid, every passenger has a claim on the trust for payments made for transportation and other travel services not provided. Unless a passenger can identify his or her funds in the trust within the time established by the court, each passenger shall receive a proportional share based on the amount paid.

(j) The seller of travel is not required to comply with the direct deposit requirement set forth in subdivision (b) if all of the following apply:

(1) The payment is made by credit card.

(2) The seller of travel does not deposit, negotiate, or factor the credit card charge or otherwise seek or obtain payment of the credit card charge or the crediting of the amount of the credit card charge to any account over which the seller of travel has any control.

(3) (A) If the charge includes transportation, the carrier that is to provide the transportation processes the credit card charge.

(B) If the charge is only for services, the provider of services processes the credit card charge.

(k) In lieu of the trust account required by this article, an adequate bond as set forth in Section 17550.11 may be maintained by the seller of travel. Prior to the advertisement of transportation or services, or both, by the seller of travel, the seller of travel shall file a copy of that bond with the Attorney General.

SEC. 9. Section 17550.16 of the Business and Professions Code is amended to read:

17550.16. (a) A seller of travel is exempt from the requirements of subdivisions (a) to (f), inclusive, of Section 17550.15 for all transactions in which the seller of travel is in compliance with paragraphs (1) to (6), inclusive, or with paragraph (7).

(1) The seller of travel sells, provides, furnishes, contracts for, or arranges air or sea transportation in transactions with persons in California, only from locations in California, and the air or sea transportation or travel services are to be furnished by (A) a registered seller of travel that is in compliance with this article and Article 2.7 (commencing with Section 17550.35) or (B) an air or sea carrier.

(2) The seller of travel forwards the passenger's funds, without offsetting or reducing the amount forwarded by any amounts due or claimed in connection with any other transaction, to (A) the provider of the transportation or travel services; (B) the Airlines Reporting Corporation; (C) the trust account identified in the registration of the seller of travel to whom the funds are forwarded; or (D) a registered seller of travel whose registration states that the registered seller is exempt pursuant to subdivision (b) or (c) from the requirements of Section 17550.15; and the seller of travel who forwards funds pursuant to subparagraph (C) or (D) obtains and keeps a copy of the registration referred to in subparagraph (C) or (D).

(3) The seller of travel is an officially appointed agent in good standing of the Airlines Reporting Corporation; and the air transportation, if any, is sold to the passenger pursuant to that agency appointment.

(4) The seller of travel has been in business under the same ownership for a period of three years, unless acquired or formed by a registered seller of travel that has been in business under the same ownership for a period of three years. For the purposes of this paragraph, the following shall not constitute a change in ownership:

(A) Any structural change involving a change in the type of entity, such as from a corporation to a partnership, and not involving the addition of any new, underlying ownership interest.

(B) The deletion of any owner or ownership interest.

(5) The seller of travel sells, provides, furnishes, contracts for, or arranges air or sea transportation or travel services only at retail directly to the general public and not through any other seller of travel, all of which air or sea transportation and travel services are to be furnished by other, unrelated providers or sellers of travel.

(6) The seller of travel is in compliance with the requirements of Section 17550.20 and Article 2.7 (commencing with Section 17550.35). Any seller of travel seeking to qualify for this exemption shall provide all information necessary for the Attorney General or his or her delegate to determine that the seller of travel meets the criteria set forth in paragraphs (1) to (6), inclusive.

(7) A seller of travel in a transaction where the air or sea transportation or travel services are furnished by a business entity that (A) is located and providing transportation or travel services outside of the United States and (B) is not in compliance with the provisions of this article, is exempt from the requirements of Section

17550.15 for that transaction if the seller of travel obtains each passenger's written acknowledgment of receiving, prior to making any payment, a clear, conspicuous, and complete written disclosure that the provider of transportation or travel services is not in compliance with the Seller of Travel Law and the transaction is not covered by the Travel Consumer Restitution Fund, and of the attendant risks and consequences thereof.

(8) If the Attorney General or his or her delegate finds pursuant to Section 17550.52 that Travel Consumer Restitution Corporation has failed or ceased to operate, a seller of travel who was a participant in the Travel Consumer Restitution Fund shall no longer be exempt from compliance with the requirements of Section 17550.15 and 17550.17.

If Article 2.7 (commencing with Section 17550.35) ceases to operate for any reason, including, but not limited to, repeal pursuant to Section 17550.59, no seller of travel shall be exempt from compliance with the requirements of Sections 17550.15 and 17550.17 unless in compliance with subdivision (b) or (c).

(b) A seller of travel who is a participant, with respect to all sales of air or sea transportation and travel services, in a Consumer Protection Deposit Plan that meets the criteria of paragraphs (1) to (3), inclusive, and who complies with paragraph (4) need not comply with Section 17550.15.

(1) The plan is operated and administered by an entity who demonstrates to the satisfaction of the Attorney General or his or her delegate that the operating and administering entity is competent and reliable, and that the plan will achieve fully the purposes and objectives of this article. Each approved plan shall include provisions requiring that each participating seller of travel (A) has been engaged in business as a seller of travel in the United States under the same ownership for not less than three years, unless acquired or formed by a seller of travel already participating and in good standing in the plan, and (B) has deposited with the administrator of the plan a minimum of one million dollars ($1,000,000) in security in the form of a bond, letter of credit, or certificate of deposit, which security shall be (i) in favor solely of the plan; (ii) held by the plan pursuant to the terms of the plan; (iii) used solely to refund passenger payments or deposits or to complete tours; and (iv) payable solely in the event that (I) the seller of travel fails to refund passenger payments or deposits due as a result of the bankruptcy, insolvency, or cessation of operations of the seller of travel or after the cancellation or material failure by the seller of travel to complete performance of the passenger's transportation or travel services, or (II) the seller of travel fails to replace the security with another meeting the criteria set forth in subparagraph (B) no later than 30 days prior to its expiration.

(2) Claims filed against the Consumer Protection Deposit Plan are decided within 45 days of receipt and paid within 30 days of decision.

(3) The Consumer Protection Deposit Plan has been reviewed and approved in writing by the Attorney General or his or her delegate as meeting the criteria set forth above, including a finding that the plan will effectuate the purposes of this article. Should the approved plan cease to provide the consumer protections set forth in paragraph (1), the Attorney General or his or her delegate shall revoke his or her approval forthwith. Upon that revocation, the seller of travel shall no longer be exempt from compliance with the requirements of Sections 17550.15 and 17550.17.

(4) Any participant in a Consumer Protection Deposit Plan seeking to qualify for this exemption shall provide all information necessary for the Attorney General or his or her delegate to determine (A) that the Consumer Protection Deposit Plan in which the seller of travel is a participant meets the criteria set forth in paragraphs (1), (2), and (3), (B) that the seller of travel is a participant in full compliance with the terms and conditions of an approved consumer protection deposit plan, and (C) provide a written agreement from the authorized representative of the Consumer Protection Deposit Plan in which the plan administrator agrees to give the office of the Attorney General, Consumer Law Section immediate written and telephonic notice in the event of termination of the seller of travel's participation in the plan.

(c) A seller of travel who utilizes for all transactions a Consumer Protection Escrow Plan which meets the criteria of paragraphs (1) to (6), inclusive, and who complies with paragraph (7) is exempt from the requirements of Section 17550.15.

(1) The plan is operated and administered as escrow holder by a federally insured bank that demonstrates to the Attorney General or his or her delegate that the manner in which it will administer the plan will be consistent with the purposes of this article. Each approved escrow plan shall include provisions requiring that all air tickets sold by participants in the plan be issued through the Airlines Reporting Corporation.

(2) All funds delivered to the escrow holder, by cash, check, charge card, or otherwise, are held and disbursed by the escrow holder for the benefit of, and to protect the interests of, the passenger.

(3) All funds are separately accounted for by booking number and passenger name.

(4) Claims filed against the escrow plan are decided within 45 days of receipt and paid within 30 days of decision.

(5) All passenger funds are to be delivered to the escrow holder as required by Section 17550.15.

(6) The Consumer Protection Escrow Plan has been reviewed and approved in writing by the Attorney General or his or her delegate as meeting the criteria set forth herein, including a finding that the plan will effectuate the purposes and objectives of this article. Should the approved plan cease to provide the consumer

protections set forth in paragraphs (1) to (5), inclusive, the Attorney General or his or her delegate shall revoke his or her approval of the plan forthwith. Upon that revocation, the seller of travel shall no longer be exempt from compliance with the requirements of Sections 17550.15 and 17550.17.

(7) Any participant in a consumer protection plan seeking to qualify for this exemption shall provide all information necessary for the Attorney General or his or her delegate to determine (A) that the Consumer Protection Escrow Plan in which the seller of travel is a participant meets the criteria set forth in paragraphs (1) to (6), inclusive, (B) that the seller of travel is a participant in full compliance with the terms and conditions of an approved consumer protection escrow plan, and (C) provide a written agreement from the authorized representative of the Consumer Protection Escrow Plan in which the plan administrator agrees to give the office of the Attorney General, Consumer Law Section, immediate written and telephonic notice in the event of termination of the seller of travel's participation in the plan.

SEC. 10. Section 17550.17 of the Business and Professions Code is amended to read:

17550.17. (a) This section does not apply to sellers of travel who are exempt from the requirements of Section 17550.15 pursuant to Section 17550.16.

(b) Upon payment in full by the passenger for air or sea transportation and any related services with a credit card or with cash, the seller of travel shall issue and deliver the ticket or voucher to the passenger or his or her designated agent within 72 hours.

(c) Upon payment in full by the passenger for air or sea transportation and any related services with a check, the seller of travel shall issue and deliver the ticket or voucher to the passenger or his or her designated agent within 72 hours of the earlier of the following:

(1) The time the passenger's payment is credited to the seller of travel's account.

(2) The expiration of the maximum hold period specified in Section 10.190405 of Title 10 of the California Code of Regulations.

(d) Tickets, vouchers, or receipts shall be deemed to have been delivered if they have been turned over to an independent third-party delivery service or the United States Postal Service for regular delivery.

(e) Where the seller of travel is unable to issue tickets or vouchers upon payment as set forth in subdivisions (b) and (c), the seller of travel may comply with this section by either: (1) forwarding to the air or sea carrier, or provider of travel services the portion of the sum paid by the passenger that is required by the air or sea carrier or provider of travel services from the seller of travel in order to provide the transportation or services purchased by that passenger; the seller of travel may not offset or reduce the amount forwarded by any

amounts due or claimed in connection with any other transaction, or (2) complying with Sections 17550.13, 17550.14, and 17550.15.

(f) There is no violation of this section if (1) compliance with this section was rendered impossible as a direct result of an unforeseen condition beyond the control of the seller of travel, and, (2) the seller of travel complied with this section or made restitution to the passenger within 30 days after the transportation or travel services purchased by the passenger were not provided.

(g) For purposes of this section, "72 hours" means three business days as defined in Section 9 of the Civil Code.

SEC. 11. Section 17550.19 of the Business and Professions Code is amended to read:

17550.19. In addition to any civil penalties provided in this division, violation of this article is punishable as follows:

(a) As a misdemeanor by a fine of not more than ten thousand dollars ($10,000), by imprisonment in a county jail for not more than one year, or by both that fine and imprisonment for each violation.

(b) In addition, any violation of Section 17550.14 or subdivision (b) or (c) of Section 17550.15 where money or real or personal property received or obtained by a seller of travel for transportation or travel services from any and all persons aggregates one thousand dollars ($1,000) or more in any consecutive 12-month period, or the payment or payments by or on behalf of any one passenger exceeds in the aggregate four hundred dollars ($400) in any 12-month period, is punishable either as a misdemeanor or as a felony by imprisonment in the state prison for 16 months, or two or three years, by a fine of not more than twenty-five thousand dollars ($25,000), or by both that fine and imprisonment for each violation.

(c) In addition, any intentional use for any purpose of a false seller of travel registration number, with intent to defraud, by an unregistered seller of travel is punishable as a misdemeanor or felony as provided in this section.

(d) Any violation of Section 17550.15 shall be a misdemeanor and shall be punished as provided in this section. Every act in violation of Section 17550.15 may be prosecuted as a separate and distinct violation and consecutive sentences may be imposed for each violation.

(e) Sellers of travel shall also comply with Sections 17537, 17537.1, and 17537.2 of the Business and Professions Code and all other applicable laws. This section shall not be construed to preclude the applicability of any other provision of the criminal law of this state that applies or may apply to any transaction.

SEC. 12. Section 17550.20 of the Business and Professions Code is amended to read:

17550.20. (a) Not less than 10 days prior to doing business in this state, a seller of travel shall apply for registration with the office of the Attorney General by filing with the Consumer Law Section the information required by Section 17550.21 and a filing fee of one

hundred dollars ($100) for each location from which the seller of travel conducts business. A late fee of five dollars ($5) per day, up to a maximum of five hundred dollars ($500), shall be paid for each day after the time specified by this section until the filing fee and the information required by Section 17550.21 are received. No registration shall be issued or approved until the late fee has been paid. A seller of travel shall be deemed to do business in this state if the seller of travel solicits business from locations in this state or solicits prospective purchasers who are located in this state.

(b) Registration shall be valid for one year from the effective date thereof shown on the registration issued by the office of the Attorney General and may be annually renewed by making the filing required by Section 17550.21 and paying a filing fee of one hundred dollars ($100) for each location from which the seller of travel conducts business. A late fee of five dollars ($5) per day, up to a maximum of five hundred dollars ($500), shall be paid for each day after the time specified by this section until the filing fee and the information required by Section 17550.21 are received. No registration shall be renewed until the late fee has been paid.

(c) Whenever, prior to expiration of a seller of travel's annual registration, there is a material change in the information required by Section 17550.21, the seller of travel shall, within 10 days, file an addendum updating the information with the Consumer Law Section of the office of the Attorney General.

(d) (1) Not less than 10 days prior to the transfer or sale of any interest in a seller of travel, the selling or transferring owner shall file with the office of the Attorney General, Seller of Travel Program, a notice of encumbrance, sale, or transfer of ownership, using a form provided for that purpose by the office of Attorney General. The notice shall provide the information required pursuant to subdivision (d) of Section 17550.21 as to each transferee.

(2) Until the time the notice of encumbrance, sale, or transfer of ownership required in paragraph (1) is filed as required, the selling, encumbering, or transferring owner is responsible for all acts of and obligations imposed by law on the transferee sellers of travel to the same extent as they would have been responsible had there been no transfer, sale, or encumbrance.

(e) The office of the Attorney General shall suspend the registration of any seller of travel who (1) fails to make any payment required pursuant to Article 2.7 (commencing with Section 17550.35) or (2) submits a check in payment of a registration fee or late fee required by this section that is not honored by the institution on which it is drawn. The registration of the seller of travel shall be suspended until all such payments due have been collected.

(f) The Attorney General may, at his or her discretion and subject to supervision by the Attorney General or his or her delegate, contract out all or any part of the processing of registrations required by this section.

(g) This section does not apply to an individual, natural person who meets all of the following conditions:

(1) Has a written contract with a registered seller of travel to act on that registered seller of travel's behalf in offering or selling air or sea transportation and other travel goods or services in connection with the transportation.

(2) Acts only on behalf of a registered seller of travel with whom the person has a written contract in the offer or sale to a passenger of air or sea transportation and other goods or services in connection with the transportation and sells no other air or sea transportation or travel services to that passenger.

(3) Provides air or sea transportation or travel services that are offered or sold pursuant to the official agency appointment of the registered seller of travel with whom the person has a written contract.

(4) Does not receive any consideration for air or sea transportation or other travel services from the passenger.

(5) Requires the passenger to pay all consideration for air or sea transportation or other travel services directly to the air carrier or ocean carrier or to the registered seller of travel.

(h) Whenever the Attorney General determines that a registration application is accurate and complete, the application shall be processed and a registration certificate shall be issued to the seller of travel within 21 days.

SEC. 13. Section 17550.21 of the Business and Professions Code is amended to read:

17550.21. Each filing pursuant to Section 17550.20 shall contain the following information:

(a) The name or names of the seller of travel, including the name under which the seller of travel is doing or intends to do business, if different from the name of the seller of travel and a copy of the current fictitious business statement filed with the responsible governmental entity, whenever a filing is required by law.

(b) The seller of travel's business form and place of organization and, if operating under a fictitious business name, the location where the fictitious name has been registered.

(c) The complete street address or addresses of all locations from which the seller of travel will be conducting business, including, but not limited to, locations at which telephone calls will be received from, or made to, passengers or other sellers of travel. The statement shall designate which location is the principal place of business.

(d) The complete business and residential address, the business telephone number, the driver's license number and state of issuance or equivalent personal identification, and the date of birth of each owner and principal of the seller of travel. "Owner" means a person who owns or controls 10 percent or more of the equity of, or otherwise has claim to 10 percent or more of the net income of, a seller of travel.

"Principal" means an owner, an officer of a corporation, a general partner of a partnership, or a sole proprietor of a sole proprietorship.

(e) A statement as to whether the seller of travel, any owner, or principal, or any other seller of travel owned or managed by any owner or principal of the seller of travel, or the seller of travel itself has had entered against that person or entity any judgment, including a stipulated judgment, order, made a plea of nolo contendere, or been convicted of any criminal violation. The statement shall identify the person, the court or administrative agency rendering the judgment, order, or conviction, the docket number of the matter, and the date of the judgment, order, or conviction; where the judgment, order, or record of conviction is filed; and the nature of the case or judgment. This subdivision does not require disclosure of marital dissolution, child support, or child custody proceedings.

(f) A copy of the travel certificates, if any, that are or will be sold, marketed, or distributed to any person or entity by the seller of travel.

(g) The seller of travel shall file with the Attorney General a signed and dated statement indicating (1) the account number of each trust account required by this article, (2) the name and address of each financial institution at which the seller of travel maintains a trust account required by this article, (3) any registration number issued to the seller of travel by the Airline Reporting Corporation or the International Association of Travel Agents Network, and (4) a consent form consenting to the Attorney General, a district attorney, or their representatives obtaining directly from the Airlines Reporting Corporation, International Association of Travel Agents Network, a seller of transportation, provider of transportation, or provider of travel services any information related to an investigation of a seller of travel's compliance with this section. The consent form shall be provided by the Attorney General. If a bond is maintained in lieu of the trust account, a copy of that bond shall be filed with the Attorney General.

(h) A statement signed by each owner and principal granting permission to the office of the Attorney General to obtain from any financial institution or credit union at which any trust account required by Section 17550.15 is maintained, information relating to that trust account, as set forth in paragraph (2) of subdivision (f) of Section 17550.15.

(i) The information required by this section shall be verified by a declaration signed by each owner and principal of the seller of travel, or in the case of a registered seller of travel that does business in California, from one or more locations in California, and that meets the requirements of paragraph (16) of subdivision (e) of Section 17511.1, by a duly authorized officer of the corporation, under penalty of perjury pursuant to the laws of the State of California. The declaration shall specify the date and location of signing. Upon reregistration by a previously registered seller of travel, the

information required by this section may be verified by the chief executive officer of a corporation, managing partner of a partnership, or manager of a limited liability company.

SEC. 14. Section 17550.23 of the Business and Professions Code is amended to read:

17550.23. (a) The Travel Consumer Restitution Corporation shall notify the office of the Attorney General whenever a seller of travel with its principal place of business in California, who does business with persons located in California, is in compliance with Article 2.7 (commencing with Section 17550.35).

(b) A registration application for a seller of travel who does not or intends not to comply with the requirements of Section 17550.15 because such seller of travel claims to meet the requirements of subdivision (b) of Section 17550.16 shall be accompanied by evidence that the seller of travel is a participant in a Consumer Protection Deposit Plan that meets the criteria set forth in subdivision (b) of Section 17550.16.

(c) A registration application for a seller of travel who does not or intends not to comply with the requirements of Section 17550.15 because such seller of travel claims to meet the requirements of subdivision (c) of Section 17550.16 shall be accompanied by evidence that the seller of travel is a participant in a Consumer Protection Escrow Plan that meets the criteria set forth in subdivision (c) of Section 17550.16.

SEC. 14.5. Section 17550.24 of the Business and Professions Code is amended to read:

17550.24. (a) The Attorney General or his or her delegate shall issue a separate registration number to each registrant whose registration is accepted. That registration number shall be valid for the period specified in subdivision (b) of Section 17550.20, unless revoked or suspended by the Attorney General or his or her delegate. Grounds for suspension or revocation include material misrepresentation in a registration application, or a failure to amend a registration as provided in subdivision (c) of Section 17550.20.

(b) Any registration issued to a seller of travel who is required to comply with the provisions of Section 17550.15 shall set forth the number and location of the required trust account.

(c) Any registration issued to a seller of travel who has complied with the requirements of subdivision (b) of Section 17550.23 shall state that the seller of travel claims an exemption from the requirements of Section 17550.15 pursuant to subdivision (b) of Section 17550.16.

(d) Any registration issued to a seller of travel who has complied with the requirements of subdivision (c) of Section 17550.23 shall state that the seller of travel claims an exemption from the requirements of Section 17550.15 pursuant to subdivision (c) of Section 17550.16.

(e) A registered seller of travel shall display a copy of its current registration certificate in a manner and place easily accessible to the public, in each location in which the seller of travel conducts its business, and shall provide a copy of its current registration upon request to any other registered seller of travel from whom it receives passenger funds in payment for transportation or travel services.

(f) The registration number of the seller of travel shall be clearly and conspicuously displayed on all advertising materials offering for sale or soliciting the purchase of any air or sea transportation or travel services, including, but not limited to, any writings, or promotional materials of any kind which are advertised, displayed, or disseminated in any manner to any persons in California, or from California to any person elsewhere. A registered seller of travel that does business in California from one or more locations in California and that meets the requirements of paragraph (16) of subdivision (e) of Section 17511.1 shall display its registration number only on advertising materials that are produced or placed by its business locations within California or that make reference to specific business locations offering air or sea transportation or travel services. Wherever seller of travel, registered seller of travel, or similar terms are used in any advertising materials, they shall be accompanied by a statement which discloses, at least as prominently, that "registration as a seller of travel does not constitute approval by the State of California."

SEC. 15. Section 17550.30 of the Business and Professions Code is amended to read:

17550.30. (a) The Travel Seller Fund is hereby created in the State Treasury. All fines and fees, including late fees, collected pursuant to this article shall be deposited in the fund, and the money in the fund may be expended only for the purposes specified in this article.

(b) All money paid into the State Treasury and credited to the Travel Seller Fund shall be used by the Department of Justice in carrying out and enforcing the provisions of this article, including, but not limited to, the payment of salaries of Department of Justice personnel, contractors, or consultants.

(c) The sum of three hundred ninety-five thousand dollars ($395,000) is hereby appropriated from the Travel Seller Fund to the Department of Justice for purposes of the Sellers of Travel Program established pursuant to Article 2.6 (commencing with Section 17550).

SEC. 16. Section 17550.32 of the Business and Professions Code is repealed.

SEC. 17. Section 17550.33 of the Business and Professions Code is repealed.

SEC. 18. Section 17550.34 of the Business and Professions Code is amended to read:

17550.34. This article shall remain in effect only until January 1, 2006, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2006, deletes or extends that date.

SEC. 19. Section 17550.37 of the Business and Professions Code is amended to read:

17550.37. (a) "Person aggrieved," as used in this article, means a passenger, as defined in Section 17550.3, located in California at the time of sale, who has sustained a loss as a result of the failure of a seller of travel to refund passenger payments made as payment for air or sea transportation or travel services, where a refund is due as a result of the bankruptcy, insolvency, cessation of operations, or material failure to provide the transportation or travel services purchased by the passenger. "Loss," as used herein, shall be limited to losses that are incurred in a transaction with a seller of travel who, at the time of sale, was a paid-up participant in the Travel Consumer Restitution Fund and was registered pursuant to Section 17550.20. "Person aggrieved" shall not mean or include a passenger in a transaction where the air or sea transportation or travel services are furnished by a business entity that (a) is located and providing transportation or travel services outside of the United States and (b) is not in compliance with Article 2.6 (commencing with Section 17550).

(b) Any person aggrieved who files a claim for payment from the Travel Consumer Restitution Fund thereby waives his or her right to bring any action at law or equity that (1) is against the seller of travel as to whom the claim is made and (2) arises from the transaction that is the subject of the claim against the restitution fund. The claim form required by Section 17550.46 shall include a clear and conspicuous notice of the waiver.

(c) The waiver of rights provided for by subdivision (b) shall not apply to any claimant whose claim is denied on any of the following grounds, as set forth in the statement of decision required by subdivision (d) of Section 17550.47:

(1) The seller of travel was not, at the time of sale, a paid-up participant in the Travel Consumer Restitution Fund, as required by subdivision (a).

(2) The seller of travel was not, at the time of sale, registered pursuant to Section 17550.20.

(3) The claimant was not located in California at the time of sale, as required by subdivision (a).

SEC. 20. Section 17550.38 of the Business and Professions Code is amended to read:

17550.38. (a) It is the purpose of the Travel Consumer Restitution Corporation to provide restitution to a person aggrieved, subject to the limitations set forth in this article. The restitution is secondary to any other source of compensation or reimbursement to which a person aggrieved may be entitled. Nothing herein shall be construed to require a person aggrieved to bring a civil action to

obtain compensation or reimbursement in order to obtain payment from the restitution fund.

(b) The restitution shall be paid from the Travel Consumer Restitution Fund established by the Travel Consumer Restitution Corporation.

(c) The Travel Consumer Restitution Corporation may request legal counsel, representation, and advice from the office of the Attorney General.

SEC. 21. Section 17550.41 of the Business and Professions Code is amended to read:

17550.41. (a) The Board of Directors of the Travel Consumer Restitution Corporation shall be composed of six directors, as follows:

(1) One public consumer representative member appointed by the Director of the Department of Consumer Affairs.

(2) One employee of the Department of Justice, assigned by the office of the Attorney General, who shall serve as an ex officio, nonvoting member.

(3) Four directors who are participants in the Travel Consumer Restitution Fund.

(b) The director appointed pursuant to paragraph (1) of subdivision (a) shall serve until the appointment is revoked or another appointment is made, or until the director resigns.

(c) Participant directors shall be elected by a balloting of all participants in the Travel Consumer Restitution Fund in an election to be conducted by the Travel Consumer Restitution Corporation in February of each year. Participant directors shall be elected to serve two-year terms, with two of the four participant directors being elected each year to staggered two-year terms.

(3) The Travel Consumer Restitution Corporation shall adopt bylaw provisions setting forth procedures for the nomination, qualifications, and election of the four participant directors, consistent with this section.

(4) A director who does not qualify to be a participant or who otherwise becomes unable to serve shall not continue to serve as director. The board of the Travel Consumer Restitution Corporation shall adopt rules setting forth the procedures to determine that a director is no longer able to serve as a director, and for the board to elect a successor to serve as director until the next election.

SEC. 22. Section 17550.43 of the Business and Professions Code is amended to read:

17550.43. (a) The Travel Consumer Restitution Corporation shall establish and maintain an operations fund for the payment of costs of operations and administration. The corporation shall prepare, prior to its fiscal yearend, an estimated annual operational budget projecting the costs of operations and administration for the succeeding fiscal year, excluding the amount paid for claims.

(b) (1) All participants making their initial payment of assessments shall pay to the Travel Consumer Restitution

Corporation an initial, one-time seventy-five dollar ($75) assessment per location from which the participant does business in the state in order to provide additional funding for the operations of the corporation, as those operations are authorized by the corporation's board of directors.

(2) All participants making their initial payment of assessments shall pay to the Travel Consumer Restitution Corporation an initial, one-time two hundred dollar ($200) assessment per location from which the participant does business in this state in order to provide additional funding for the restitution fund.

(c) All participants who were sellers of travel in any year, and who did not pay a Travel Consumer Restitution Corporation assessment in that year shall, when making a payment of assessment in a subsequent year, pay the Travel Consumer Restitution Corporation all assessments for the operations of the corporation and the restitution fund for the years in which they were in business as were billed and paid by participants in those years.

(d) The Travel Consumer Restitution Corporation shall establish a restitution fund for the payment of claims. All claims shall be paid from the restitution fund.

(1) The restitution fund shall be in the form of a trust account maintained in the State of California with a federally insured bank that shall be selected by the Board of Directors of the Travel Consumer Restitution Corporation and shall be approved by the office of the Attorney General. The Board of Directors of the Travel Consumer Restitution Corporation or its delegate shall serve as trustee.

(2) The restitution fund shall meet the following criteria:

(A) The trustee shall deposit all restitution funds received into the trust account.

(B) The trustee shall maintain a separate accounting for disbursements and collections on account of claims against each participant. Quarterly reports shall be provided to the office of the Attorney General, Consumer Law Section.

(C) The trustee shall disburse funds from the trust as directed by the Travel Consumer Restitution Corporation pursuant to Section 17550.47.

(D) The trustee may only invest the operations fund and trust funds in any of the securities described in subdivision (a) or (b) of Section 16430 of the Government Code.

SEC. 23. Section 17550.44 of the Business and Professions Code is amended to read:

17550.44. (a) In addition to the assessments required by Section 17550.43, the Travel Consumer Restitution Corporation shall bill and collect from each participant an annual assessment that in the aggregate shall consist of assessments for the operations fund and the restitution fund. For each participant, the due date of that annual assessment shall be 30 days prior to the annual renewal date for

registration pursuant to Section 17550.20 or 45 days after billing, whichever is later. For a participant registering for the first time, the assessments required by Section 17550.43 shall be due 10 days prior to the seller of travel doing business in this state. A late fee of five dollars ($5) per day, up to a maximum of five hundred dollars ($500), shall be paid for each day after the due date specified in this section until the assessment is paid.

(b) The annual assessment for the operations fund shall be determined no later than January 15 of each year for the next fiscal year in an amount that does not exceed the amount necessary to fund the operations and administration of the corporation, based upon the annual operational budget required by subdivision (a) of Section 17550.43, and shall become effective immediately. The annual assessment for the operations fund shall not exceed thirty-five dollars ($35) per year for each location in the state from which a participant does business.

(c) If, as of January 15 of any year, the balance in the restitution fund is less than one million six hundred thousand dollars ($1,600,000), the Travel Consumer Restitution Corporation shall make an assessment of participants, up to a maximum amount of two hundred dollars ($200) for each location in the state from which a participant does business, to bring the restitution fund to an expected balance of one million six hundred thousand dollars ($1,600,000). Every participant's assessment shall be determined pro rata based upon the ratio of the number of locations in the state from which the participant does business to the total number of locations for all participants as of the preceding December 15.

(d) If, on May 1 or October 15 of any year, the balance in the restitution fund is less than nine hundred thousand dollars ($900,000), the corporation shall make an emergency assessment of participants, not more than twice per year, up to a maximum amount of one hundred fifty dollars ($150) per year for each location in the state from which the participant does business, for deposit in the trust account to return the level of the restitution fund to an expected balance of one million six hundred thousand dollars ($1,600,000). The corporation shall estimate the total cost of billing, collecting, and processing the emergency restitution fund assessment and shall assess and collect, together with the emergency restitution fund assessment, an emergency operations fund assessment that is in the aggregate sufficient to offset the estimated cost. Each participant's assessments shall be determined pro rata based upon the ratio of the number of locations in the state from which the participant does business to the total number of locations for all participants as of the first day of the preceding month. The board of directors shall adopt rules for the notification of emergency assessments.

(e) In addition to the assessments required by Section 17550.43 and subdivision (d), if at any time during the fiscal year the board of directors of the Travel Consumer Restitution Corporation

determines that the operations fund will be insufficient to pay the costs of operations and administration for the current or next fiscal year, the corporation, as determined by the board of directors, shall do either or both of the following: (A) make an emergency assessment of participants, not more than once per fiscal year, up to a maximum amount of sixty-five dollars ($65) per year for each location in the state from which a participant does business. The emergency assessment may be billed and collected either on an emergency basis from all participants upon the making of the assessment, or in conjunction with each participant's annual assessment pursuant to subdivision (a) of Section 17550.44, (B) transfer any or all interest earned on the Restitution Fund to the Operations Fund, provided that no transfer results in a restitution fund balance of less than one million two hundred thousand dollars ($1,200,000).

(f) The assessment required by subdivision (d) or (e) shall be due 45 days from the date the bill for that assessment is mailed by the Travel Consumer Restitution Corporation. A late fee of five dollars ($5) per day, up to a maximum of five hundred dollars ($500), shall be paid for each day after the due date specified in this section until the assessment is paid.

(g) The Travel Consumer Restitution Fund shall report to the office of the Attorney General each levy of assessment within 10 business days after the levy.

SEC. 24. Section 17550.46 of the Business and Professions Code is amended to read:

17550.46. (a) The Attorney General or his or her delegate shall approve any claim form which shall be provided to a person aggrieved by the Travel Consumer Restitution Corporation to be submitted by a person aggrieved in order to obtain payment from the restitution fund. The claim form shall require the person aggrieved to provide the corporation with information which is sufficient to decide whether payment is to be made to that person. The information must include all of the following:

(1) The name, address, and telephone number of the person aggrieved.

(2) The date, form, and amount of each payment and evidence thereof.

(3) The amount of the claim and specific basis therefor.

(4) Any written agreements, correspondence, or other documentation relevant to the transaction and to the transportation or travel services which were purchased and not provided.

(5) Identification of the transportation or travel services which were purchased and not provided.

(6) Description of any payment or reimbursement or alternative transportation or travel services received by the person aggrieved for the transportation or purchased travel services which were not provided.

(b) If any required information is unavailable to the person aggrieved, the person shall so state in the claim form, explaining why the information is unavailable. The corporation may require any other additional information as may be necessary to decide the claim. Failure to provide any required information or documentation or an adequate explanation as to why the information is unavailable shall constitute grounds for denial of a claim.

(c) The person aggrieved who submits a claim form shall sign the form stating, under penalty of perjury pursuant to the laws of the State of California, that the information contained in the form and any statements by the person making the claim submitted therewith are true and correct.

SEC. 25. Section 17550.47 of the Business and Professions Code is repealed.

SEC. 26. Section 17550.47 is added to the Business and Professions Code, to read:

17550.47. (a) (1) Any person aggrieved who suffers a loss of more than fifty dollars ($50) of amounts paid for air or sea transportation or travel services may file a claim with the Travel Consumer Restitution Corporation by filing a claim form as required by Section 17550.46 and paying, by check or money order, a processing fee to the Travel Consumer Restitution Corporation in the amount of thirty-five dollars ($35). Any check for the processing fee that is returned unpaid to the corporation by the financial institution upon which it is drawn shall be returned to the claimant and the claim shall be rejected for filing. Any claimant whose claim is rejected may resubmit his or her claim upon payment of a processing fee of fifty dollars ($50).

(2) Any processing fee required by paragraph (1) shall be nonrefundable except where (A) a claim is denied on the basis as set forth in the statement of decision that either the seller of travel, at the time of sale, was not a participant in the Travel Consumer Restitution Fund or the seller of travel was not registered, or (B) the claim is granted in whole or in part. In either case, the processing fee shall be refunded to the person aggrieved upon denial or upon payment of the claim, whichever is applicable.

(3) In no event shall a person aggrieved have more than six months after the scheduled date of completion of travel within which to file a claim with the Travel Consumer Restitution Fund.

(b) A person aggrieved may recover from the Travel Consumer Restitution Fund an amount not to exceed fifteen thousand dollars ($15,000) per person aggrieved, not to exceed the amount paid to the participant by or on behalf of the person aggrieved for the transportation or travel services. Payments from the restitution fund shall be limited to restitution for sums paid for transportation or travel services and shall not include any other amounts, including, but not limited to, payment for lost wages, pain and suffering, emotional distress, travel insurance, lost luggage, or any

consequential damages. The person aggrieved shall not be entitled to receive attorney's fees in connection with a filed claim or on appeal.

(c) All claims are to be decided on the written record before the corporation, with no hearing to be held. The record shall consist of a fully executed and complete claim form, any other documentation submitted by the claimant or the participant, and any documents or reports submitted by staff or the designated representative of the office of the Attorney General. Claims are to be decided within 45 days of receipt unless (1) the designated representative of the office of the Attorney General requests a continuance to obtain and submit information, or (2) the Travel Consumer Restitution Corporation determines that additional information or documentation is required to decide the claim. In either case, the claim shall be decided within 45 days of receipt of all additional information or documentation. A claim not decided timely shall be deemed granted.

(d) Whenever the Travel Consumer Restitution Corporation denies a claim in whole or in part, it shall provide to the claimant a written statement of decision setting forth the factual and legal basis for the denial.

(e) A claimant may request reconsideration of an adverse decision of the Travel Consumer Restitution Corporation by mailing a written request, accompanied by a processing fee of fifty dollars ($50) paid by check or money order, within 20 days of the date a notice of denial and statement of decision was mailed to the claimant. Any check for the processing fee that is returned unpaid to the Travel Consumer Restitution Corporation by the financial institution upon which it is drawn shall be returned to the claimant and the request for reconsideration shall not be determined until the claimant has paid the fifty dollars ($50) processing fee.

(f) The Travel Consumer Restitution Corporation shall, within 60 days of receipt of the request, either decide the request or advise the claimant that additional information or documentation is needed, and if the decision is a denial in whole or in part, it shall provide to the claimant and seller of travel a written statement of decision setting forth the factual and legal basis for the decision. No appeal may be taken pursuant to subdivision (g) until reconsideration has been requested and decided. The claimant shall not be entitled to any attorney's fees incurred in connection with presentation of a claim or request for reconsideration.

(g) No decision of the Travel Consumer Restitution Corporation granting or denying a claim in whole or part shall be subject to review or appeal except as provided in this section. A claimant may seek review of the denial, in whole or part, of a claim by filing a notice of appeal after having served the notice by mail on the Travel Consumer Restitution Corporation. The notice of appeal shall be filed and served on the Travel Consumer Restitution Corporation not later than 30 days after a written statement of decision on a request

for reconsideration has been mailed to the claimant. The notice of appeal from a decision of the Travel Consumer Restitution Corporation shall be filed with the clerk of the superior court either in the county in which the principal place of business of the Travel Consumer Restitution Corporation is located, or in the county in which the claimant was a resident at the time the claimant purchased the transportation or travel services in dispute.

(h) The claimant shall pay the same filing fee as is required for appeals from small claims court. The Travel Consumer Restitution Corporation shall file its response and the record of the claim before the corporation with the clerk of the superior court within 30 days of the day the notice of appeal was served on the Travel Consumer Restitution Corporation.

(i) Upon the filing of the record the clerk of the court shall schedule a hearing for the earliest available time and shall mail written notice of the hearing at least 14 days prior to the time set for the hearing.

(j) The hearing on appeal shall be limited to the record before the Travel Consumer Restitution Corporation and any relevant evidence that could not have been with reasonable diligence submitted previously to the corporation. The reviewing court shall apply a preponderance of the evidence standard of review. The pretrial discovery procedures described in subdivision (a) of Section 2019 of the Code of Civil Procedure are not permitted, there is no right to trial by jury, and the decision of the superior court shall be appealable by either party. No money may be claimed from or paid by the Travel Consumer Restitution Fund except in accordance with the provisions and procedures set forth in this article. No provision herein shall limit or otherwise affect those remedies as may be available against persons or entities other than the Travel Consumer Restitution Corporation.

(k) If the claimant prevails in whole or in part on an appeal, the claimant shall not be entitled to an award in excess of the amount of the original claim.

(*l*) Any claim awarded by the corporation shall be paid promptly by the trustee of the restitution fund when the time for appeal has passed. Any judgment on appeal shall be paid promptly by the trustee of the restitution fund whenever the judgment becomes final. If there should be insufficient funds to pay a claim when otherwise due, claims shall be paid in the order received. If the Travel Consumer Restitution Corporation ceases to operate pursuant to the terms of Section 17550.52, any remaining trust funds shall be allocated on a pro rata basis to claims accruing prior to the corporation ceasing to operate, after payment of outstanding debts and liabilities as provided in Section 17550.57.

(m) A claim shall require a majority of at least three affirmative votes for denial, otherwise it shall be deemed granted.

SEC. 27. Section 17550.53 of the Business and Professions Code is amended to read:

17550.53. (a) The Travel Consumer Restitution Corporation shall have independent authority to investigate claims filed by persons aggrieved pursuant to Section 17550.47.

(b) The corporation, upon the request of the office of the Attorney General, may participate in an examination or investigation of the books and records of a participant for the purpose of evaluating a claim related to that seller of travel. There shall be no liability on the part of, and no cause of action of any nature shall arise against, the State of California or any of its employees, agents, or representatives for the release of any information furnished to the Travel Consumer Restitution Corporation pursuant to this subdivision or in connection with the investigation or review of any claim.

(c) With the consent of a majority of its directors, the corporation, in order to fulfill its obligations under this article, may appoint an independent certified public accountant or public accountant or hire or appoint a specialized committee or employees to conduct an examination or investigation authorized by this section. Any reports as a result thereof shall be furnished to the office of the Attorney General.

(d) To assist the corporation in evaluating a claim related to a participant, the participant shall provide or make available for inspection by the corporation those books, accounts, bank account records, and files which are necessary for the corporation to evaluate the claim.

(e) The corporation, any participant, an agent of the corporation or any person other than a law enforcement agency who uses information obtained under this section for any purpose not authorized in this article or Article 2.6 (commencing with Section 17550) is guilty of a misdemeanor.

(f) Costs and expenses for any examination under this section shall be paid for by the participant if a claim directly related to that seller of travel has been approved and payment has been made to a person aggrieved. The corporation may maintain an action for recovery of these examination costs and expenses in any court of competent jurisdiction, and shall recover its reasonable costs and attorney's fees as an item of costs, as provided for in paragraph (10) of subdivision (a) and paragraph (5) of subdivision (c) of Section 1033.5 of the Code of Civil Procedure.

SEC. 28. Section 17550.57 of the Business and Professions Code is amended to read:

17550.57. If the Travel Consumer Restitution Corporation is dissolved or ceases to exist, or if the Attorney General or his or her delegate makes a determination pursuant to Section 17550.52 that the corporation has failed or ceased to operate, all outstanding debts, obligations of the corporation, and amounts due for services rendered shall first be paid from the remaining assets, including the

restitution fund. The assets remaining after settling all those liabilities shall be distributed to the participants, less the costs of that distribution. The distribution to participants shall be pro rata based upon the ratio of the number of locations in the state from which the participant does business to the total number of locations for all registered participants at the time the corporation is dissolved or ceases to exist.

SEC. 29. Section 17550.58 of the Business and Professions Code is amended to read:

17550.58. All costs and expenses incurred by the Department of Justice in the administration of this article, including those incurred pursuant to Section 17550.38, shall be paid to the department by the Travel Consumer Restitution Corporation. The department may institute an action for the recovery of costs and expenses incurred in the administration of this article in any court of competent jurisdiction.

SEC. 30. Section 17550.59 of the Business and Professions Code is amended to read:

17550.59. This article shall remain in effect only until January 1, 2006, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2006, deletes or extends that date.

SEC. 31. Section 3.5 of Chapter 1123 of the Statutes of 1994 is amended to read:

Sec. 3.5. Article 2.5 (commencing with Section 17540) of Chapter 1 of Part 3 of Division 7 of the Business and Professions Code shall remain in effect until January 1, 1996, and as of that date shall become inoperative, unless a later enacted statute, which is enacted before January 1, 1996, deletes or extends that date. However, Article 2.5 (commencing with Section 17540) of Chapter 1 of Part 3 of Division 7 of the Business and Professions Code shall again become operative on January 1, 2006, unless the repeal date of Article 2.6 (commencing with Section 17550) and Article 2.7 (commencing with Section 17550.35) of Chapter 1 of Part 3 of Division 7 of the Business and Professions Code is extended beyond that date, in which case, Article 2.5 (commencing with Section 17540) of Chapter 1 of Part 3 of Division 7 of the Business and Professions Code shall again become operative on the date that both Article 2.6 (commencing with Section 17550) and Article 2.7 (commencing with Section 17550.35) of Chapter 1 of Part 3 of Division 7 of the Business and Professions Code are repealed.

The repeal of Article 2.5 (commencing with Section 17540), Article 2.6 (commencing with Section 17550), or Article 2.7 (commencing with Section 17550.35) of Chapter 1 of Part 3 of Division 7 of the Business and Professions Code shall not (1) affect any civil or criminal action predicated on a violation of any of those articles prior to its repeal, regardless of whether the action has been reduced to a final judgment or (2) release or extinguish any civil or criminal remedy, penalty, or liability in any manner arising from the violation of any

of those articles prior to its repeal. The article whose violation is the subject of the civil or criminal action shall be treated as if it still remained in full force and effect for the purpose of sustaining the civil or criminal action for the enforcement of any remedy, penalty, or liability arising from the violation of the article prior to its repeal.

SEC. 32. The Attorney General shall report to the Legislature on or before January 1, 2005. The report shall contain information and statistics appropriate and relative to protecting the public's welfare through the programs contained in Article 2.6 (commencing with Section 17550) and Article 2.7 (commencing with Section 17550.35) of Chapter 1 of Part 3 of Division 7 of the Business and Professions Code, including the sellers of travel registration program, the Travel Consumer Restitution Corporation, and the Travel Consumer Restitution Fund. The report shall include statistics as to the number of registrants, disciplinary actions, budget information, claims against the fund, the condition of the fund, and any other information the Attorney General deems necessary in order to make recommendations to the Legislature.

SEC. 33. 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 925

An act to amend Sections 261.5, 288, 667.71, 1170.1, and 12022.53 of the Penal Code, and to amend Sections 676, 707, and 828.1 of the Welfare and Institutions Code, relating to crime and punishment.

[Approved by Governor September 28, 1998. Filed with Secretary of State September 28, 1998.]

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

SECTION 1. Section 261.5 of the Penal Code is amended to read:

261.5. (a) Unlawful sexual intercourse is an act of sexual intercourse accomplished with a person who is not the spouse of the perpetrator, if the person is a minor. For the purposes of this section,

a "minor" is a person under the age of 18 years and an "adult" is a person who is at least 18 years of age.

(b) Any person who engages in an act of unlawful sexual intercourse with a minor who is not more than three years older or three years younger than the perpetrator, is guilty of a misdemeanor.

(c) Any person who engages in an act of unlawful sexual intercourse with a minor who is more than three years younger than the perpetrator is guilty of either a misdemeanor or a felony, and shall be punished by imprisonment in a county jail not exceeding one year, or by imprisonment in the state prison.

(d) Any person 21 years of age or older who engages in an act of unlawful sexual intercourse with a minor who is under 16 years of age is guilty of either a misdemeanor or a felony, and shall be punished by imprisonment in a county jail not exceeding one year, or by imprisonment in the state prison for two, three, or four years.

(e) (1) Notwithstanding any other provision of this section, an adult who engages in an act of sexual intercourse with a minor in violation of this section may be liable for civil penalties in the following amounts:

(A) An adult who engages in an act of unlawful sexual intercourse with a minor less than two years younger than the adult is liable for a civil penalty not to exceed two thousand dollars ($2,000).

(B) An adult who engages in an act of unlawful sexual intercourse with a minor at least two years younger than the adult is liable for a civil penalty not to exceed five thousand dollars ($5,000).

(C) An adult who engages in an act of unlawful sexual intercourse with a minor at least three years younger than the adult is liable for a civil penalty not to exceed ten thousand dollars ($10,000).

(D) An adult over the age of 21 years who engages in an act of unlawful sexual intercourse with a minor under 16 years of age is liable for a civil penalty not to exceed twenty-five thousand dollars ($25,000).

(2) The district attorney may bring actions to recover civil penalties pursuant to this subdivision. From the amounts collected for each case, an amount equal to the costs of pursuing the action shall be deposited with the treasurer of the county in which the judgment was entered, and the remainder shall be deposited in the Underage Pregnancy Prevention Fund, which is hereby created in the State Treasury. Amounts deposited in the Underage Pregnancy Prevention Fund may be used only for the purpose of preventing underage pregnancy upon appropriation by the Legislature.

SEC. 2. Section 288 of the Penal Code is amended to read:

288. (a) Any person who willfully and lewdly commits any lewd or lascivious act, including any of the acts constituting other crimes provided for in Part 1, upon or with the body, or any part or member thereof, of a child who is under the age of 14 years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of that person or the child, is guilty of a felony and shall be

punished by imprisonment in the state prison for three, six, or eight years.

(b) (1) Any person who commits an act described in subdivision (a) by use of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, is guilty of a felony and shall be punished by imprisonment in the state prison for three, six, or eight years.

(2) Any person who is a caretaker and commits an act described in subdivision (a) upon a dependent adult by use of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, with the intent described in subdivision (a), is guilty of a felony and shall be punished by imprisonment in the state prison for three, six, or eight years.

(c) (1) Any person who commits an act described in subdivision (a) with the intent described in that subdivision, and the victim is a child of 14 or 15 years, and that person is at least 10 years older than the child, is guilty of a public offense and shall be punished by imprisonment in the state prison for one, two, or three years, or by imprisonment in a county jail for not more than one year. In determining whether the person is at least 10 years older than the child, the difference in age shall be measured from the birth date of the person to the birth date of the child.

(2) Any person who is a caretaker and commits an act described in subdivision (a) upon a dependent adult, with the intent described in subdivision (a), is guilty of a public offense and shall be punished by imprisonment in the state prison for one, two, or three years, or by imprisonment in a county jail for not more than one year.

(d) In any arrest or prosecution under this section or Section 288.5, the peace officer, district attorney, and the court shall consider the needs of the child victim and shall do whatever is necessary, within existing budgetary resources, and constitutionally permissible to prevent psychological harm to the child victim or to prevent psychological harm to the dependent adult victim resulting from participation in the court process.

(e) Upon the conviction of any person for a violation of subdivision (a) or (b), the court may, in addition to any other penalty or fine imposed, order the defendant to pay an additional fine not to exceed ten thousand dollars ($10,000). In setting the amount of the fine, the court shall consider any relevant factors, including, but not limited to, the seriousness and gravity of the offense, the circumstances of its commission, whether the defendant derived any economic gain as a result of the crime, and the extent to which the victim suffered economic losses as a result of the crime. Every fine imposed and collected under this section shall be deposited in the Victim-Witness Assistance Fund to be available for appropriation to fund child sexual exploitation and child sexual abuse victim counseling centers and prevention programs pursuant to Section 13837.

If the court orders a fine imposed pursuant to this subdivision, the actual administrative cost of collecting that fine, not to exceed 2 percent of the total amount paid, may be paid into the general fund of the county treasury for the use and benefit of the county.

(f) For purposes of paragraph (2) of subdivision (b) and paragraph (2) of subdivision (c), the following definitions apply:

(1) "Caretaker" means an owner, operator, administrator, employee, independent contractor, agent, or volunteer of any of the following public or private facilities when the facilities provide care for elder or dependent adults:

(A) Twenty-four hour health facilities, as defined in Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code.

(B) Clinics.

(C) Home health agencies.

(D) Adult day health care centers.

(E) Secondary schools that serve dependent adults ages 18 to 22 years and postsecondary educational institutions that serve dependent adults or elders.

(F) Sheltered workshops.

(G) Camps.

(H) Community care facilities, as defined by Section 1402 of the Health and Safety Code, and residential care facilities for the elderly, as defined in Section 1569.2 of the Health and Safety Code.

(I) Respite care facilities.

(J) Foster homes.

(K) Regional centers for persons with developmental disabilities.

(L) A home health agency licensed in accordance with Chapter 8 (commencing with Section 1725) of Division 2 of the Health and Safety Code.

(M) An agency that supplies in-home supportive services.

(N) Board and care facilities.

(O) Any other protective or public assistance agency that provides health services or social services to elder or dependent adults, including, but not limited to, in-home supportive services, as defined in Section 14005.14 of the Welfare and Institutions Code.

(P) Private residences.

(2) "Board and care facilities" means licensed or unlicensed facilities that provide assistance with one or more of the following activities:

(A) Bathing.

(B) Dressing.

(C) Grooming.

(D) Medication storage.

(E) Medical dispensation.

(F) Money management.

(3) "Dependent adult" means any person 18 years of age or older who has a mental disability or disorder that restricts his or her ability to carry out normal activities or to protect his or her rights, including,

but not limited to, persons who have developmental disabilities, persons whose mental abilities have significantly diminished because of age.

(g) Paragraph (2) of subdivision (b) and paragraph (2) of subdivision (c) apply to the owners, operators, administrators, employees, independent contractors, agents, or volunteers working at these public or private facilities and only to the extent that the individuals personally commit, conspire, aid, abet, or facilitate any act prohibited by paragraph (2) of subdivision (b) and paragraph (2) of subdivision (c).

(h) Paragraph (2) of subdivision (b) and paragraph (2) of subdivision (c) do not apply to a caretaker who is a spouse of, or who is in an equivalent domestic relationship with, the dependent adult under care.

SEC. 3. Section 667.71 of the Penal Code is amended to read:

667.71. (a) For the purpose of this section, a habitual sexual offender is a person who has been previously convicted of one or more of the offenses listed in subdivision (c) and who is convicted in the present proceeding of one of those offenses.

(b) A habitual sexual offender is punishable by imprisonment in the state prison for 25 years to life. Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall apply to reduce any minimum term of 25 years in the state prison imposed pursuant to this section. However, in no case shall the minimum term of 25 years be reduced by more than 15 percent for credits granted pursuant to Section 2933, 4019, or any other law providing for conduct credit reduction. In no case shall any person who is punished under this section be released on parole prior to serving at least 85 percent of the minimum term of 25 years in the state prison.

(c) This section shall apply to any of the following offenses:

(1) A violation of paragraph (2) of subdivision (a) of Section 261.

(2) A violation of paragraph (1) of subdivision (a) of Section 262.

(3) A violation of Section 264.1.

(4) A violation of subdivision (a) or (b) of Section 288.

(5) A violation of subdivision (a) of Section 289.

(6) A violation of Section 288.5.

(7) A violation of subdivision (c) of Section 286 by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

(8) A violation of subdivision (d) of Section 286.

(9) A violation of subdivision (c) or (d) of Section 288a by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

(10) A violation of subdivision (b) of Section 207.

(11) A violation of former subdivision (d) of Section 208 (kidnapping to commit specified sex offenses).

(12) Kidnapping in violation of Section 209 with the intent to commit rape, spousal rape, oral copulation, or sodomy or rape by instrument in violation of Section 289.

(13) A violation of Section 269.

(14) An offense committed in another jurisdiction that has all the elements of an offense specified in paragraphs (1) to (13), inclusive, of this subdivision.

(d) This section shall apply only if the defendant's status as a habitual sexual offender is alleged in the information, 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 a plea of guilty or nolo contendere or by trial by court sitting without a jury.

SEC. 4. Section 1170.1 of the Penal Code is amended to read:

1170.1. (a) Except as provided in subdivisions (b) and (c), and subject to Section 654, when any person is convicted of two or more felonies, whether in the same proceeding or court or in different proceedings or courts, and whether by judgment rendered by the same or by a different court, and a consecutive term of imprisonment is imposed under Sections 669 and 1170, the aggregate term of imprisonment for all these convictions shall be the sum of the principal term, the subordinate term, and any additional term imposed for applicable enhancements for prior convictions, prior prison terms, and Section 12022.1. The principal term shall consist of the greatest term of imprisonment imposed by the court for any of the crimes, including any term imposed for applicable specific enhancements. The subordinate term for each consecutive offense which is not a "violent felony," as defined in subdivision (c) of Section 667.5, shall consist of one-third of the middle term of imprisonment prescribed for each other felony conviction for an offense that is not a violent felony for which a consecutive term of imprisonment is imposed, and shall exclude any specific enhancements. Except as otherwise provided by law, the total of subordinate terms for those consecutive offenses which are not "violent felonies," as defined in subdivision (c) of Section 667.5, shall not exceed five years. The subordinate term for each consecutive offense which is a "violent felony," as defined in any paragraph of subdivision (c) of Section 667.5, shall consist of one-third of the middle term of imprisonment prescribed for each other felony conviction for an offense that is a violent felony for which a consecutive term of imprisonment is imposed, and shall include one-third of the term imposed for any specific enhancements applicable to those subordinate offenses.

(b) When a consecutive term of imprisonment is imposed under Sections 669 and 1170 for two or more convictions for kidnapping, as defined in Section 207, involving separate victims, the aggregate term shall be calculated as provided in subdivision (a), except that the subordinate term for each subsequent kidnapping conviction shall consist of the full middle term for each kidnapping conviction

for which a consecutive term of imprisonment is imposed and shall include the full term imposed for specific enhancements applicable to those subordinate offenses. The total of the subordinate terms imposed pursuant to this subdivision may exceed five years.

(c) In the case of any person convicted of one or more felonies committed while the person is confined in a state prison or is subject to reimprisonment for escape from custody and the law either requires the terms to be served consecutively or the court imposes consecutive terms, the term of imprisonment for all the convictions which the person is required to serve consecutively shall commence from the time the person would otherwise have been released from prison. If the new offenses are consecutive with each other, the principal and subordinate terms shall be calculated as provided in subdivision (a), except that the total of subordinate terms may exceed five years. This subdivision shall be applicable in cases of convictions of more than one offense in different proceedings, and convictions of more than one offense in the same or different proceedings.

(d) When the court imposes a prison sentence for a felony pursuant to Section 1170, the court shall also impose the additional terms provided for any applicable enhancements. The court shall also impose any other additional term that the court determines in its discretion or as required by law shall run consecutive to the term imposed under Section 1170. In considering the imposition of the additional term, the court shall apply the sentencing rules of the Judicial Council.

(e) All enhancements shall be alleged in the accusatory pleading and either admitted by the defendant in open court or found to be true by the trier of fact.

(f) When two or more enhancements may be imposed for being armed with or using a dangerous or deadly weapon or a firearm in the commission of a single offense, only the greatest of those enhancements shall be imposed for that offense. This subdivision shall not limit the imposition of any other enhancements applicable to that offense, including an enhancement for the infliction of great bodily injury.

(g) When two or more enhancements may be imposed for the infliction of great bodily injury in the commission of a single offense, only the greatest of those enhancements shall be imposed for that offense. This subdivision shall not limit the imposition of any other enhancements applicable to that offense, including an enhancement for being armed with or using a dangerous or deadly weapon or a firearm.

(h) For any violation of paragraph (2), (3), or (6) of subdivision (a) of Section 261, paragraph (1) or (4) of subdivision (a) of Section 262, Section 264.1, subdivision (b) of Section 288, subdivision (a) of Section 289, or sodomy or oral copulation by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the

victim or another person as provided in Section 286 or 288a, the number of enhancements that may be imposed shall not be limited, regardless of whether the enhancements are pursuant to this section, Section 667.6, or some other section of law. Each of the enhancements shall be a full and separately served enhancement and shall not be merged with any term or with any other enhancement.

SEC. 4.5. Section 1170.1 of the Penal Code is amended to read:

1170.1. (a) Except as provided in subdivisions (b) and (c), and subject to Section 654, when any person is convicted of two or more felonies, whether in the same proceeding or court or in different proceedings or courts, and whether by judgment rendered by the same or by a different court, and a consecutive term of imprisonment is imposed under Sections 669 and 1170, the aggregate term of imprisonment for all these convictions shall be the sum of the principal term, the subordinate term, and any additional term imposed for applicable enhancements for prior convictions, prior prison terms, and Section 12022.1. The principal term shall consist of the greatest term of imprisonment imposed by the court for any of the crimes, including any term imposed for applicable specific enhancements. The subordinate term for each consecutive offense which is not a "violent felony," as defined in subdivision (c) of Section 667.5, shall consist of one-third of the middle term of imprisonment prescribed for each other felony conviction for an offense that is not a violent felony for which a consecutive term of imprisonment is imposed, and shall exclude any specific enhancements. The subordinate term for each consecutive offense which is a "violent felony," as defined in any paragraph of subdivision (c) of Section 667.5, shall consist of one-third of the middle term of imprisonment prescribed for each other felony conviction for an offense that is a violent felony for which a consecutive term of imprisonment is imposed, and shall include one-third of the term imposed for any specific enhancements applicable to those subordinate offenses.

(b) When a consecutive term of imprisonment is imposed under Sections 669 and 1170 for two or more convictions for kidnapping, as defined in Section 207, involving separate victims, the aggregate term shall be calculated as provided in subdivision (a), except that the subordinate term for each subordinate kidnapping conviction shall consist of the full middle term for each kidnapping conviction for which a consecutive term of imprisonment is imposed and shall include the full term imposed for specific enhancements applicable to those subordinate offenses.

(c) In the case of any person convicted of one or more felonies committed while the person is confined in a state prison or is subject to reimprisonment for escape from custody and the law either requires the terms to be served consecutively or the court imposes consecutive terms, the term of imprisonment for all the convictions that the person is required to serve consecutively shall commence from the time the person would otherwise have been released from

prison. If the new offenses are consecutive with each other, the principal and subordinate terms shall be calculated as provided in subdivision (a). This subdivision shall be applicable in cases of convictions of more than one offense in different proceedings, and convictions of more than one offense in the same or different proceedings.

(d) When the court imposes a prison sentence for a felony pursuant to Section 1170, the court shall also impose the additional terms provided for any applicable enhancements. The court shall also impose any other additional term that the court determines in its discretion or as required by law shall run consecutive to the term imposed under Section 1170. In considering the imposition of the additional term, the court shall apply the sentencing rules of the Judicial Council.

(e) All enhancements shall be alleged in the accusatory pleading and either admitted by the defendant in open court or found to be true by the trier of fact.

(f) When two or more enhancements may be imposed for being armed with or using a dangerous or deadly weapon or a firearm in the commission of a single offense, only the greatest of those enhancements shall be imposed for that offense. This subdivision shall not limit the imposition of any other enhancements applicable to that offense, including an enhancement for the infliction of great bodily injury.

(g) When two or more enhancements may be imposed for the infliction of great bodily injury in the commission of a single offense, only the greatest of those enhancements shall be imposed for that offense. This subdivision shall not limit the imposition of any other enhancements applicable to that offense, including an enhancement for being armed with or using a dangerous or deadly weapon or firearm.

(h) For any violation of paragraph (2), (3), or (6) of subdivision (a) of Section 261, paragraph (1) or (4) of subdivision (a) of Section 262, Section 264.1, subdivision (b) of Section 288, subdivision (a) of Section 289, or sodomy or oral copulation by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person as provided in Section 286 or 288a, the number of enhancements that may be imposed shall not be limited, regardless of whether the enhancements are pursuant to this section, Section 667.6, or some other section of law. Each of the enhancements shall be a full and separately served enhancement and shall not be merged with any term or with any other enhancement.

SEC. 5. Section 12022.53 of the Penal Code is amended to read:

12022.53. (a) This section applies to the following felonies:

(1) Section 187 (murder).

(2) Sections 203 and 205 (mayhem).

(3) Sections 207, 209, and 209.5 (kidnapping).

(4) Section 211 (robbery).

(5) Section 215 (carjacking).
(6) Section 220 (assault with intent to commit a specified felony).
(7) Subdivision (d) of Section 245 (assault with a firearm on a peace officer or firefighter).
(8) Sections 261 and 262 (rape).
(9) Section 264.1 (rape or penetration by a foreign object in concert).
(10) Section 286 (sodomy).
(11) Sections 288 and 288.5 (lewd act on a child).
(12) Section 288a (oral copulation).
(13) Section 289 (penetration by a foreign object).
(14) Section 4500 (assault by life prisoner).
(15) Section 4501 (assault by prisoner).
(16) Section 4503 (holding a hostage by prisoner).
(17) Any felony punishable by death or imprisonment in the state prison for life.
(18) Any attempt to commit a crime listed in this subdivision other than an assault.

(b) Notwithstanding any other provision of law, any person who is convicted of a felony specified in subdivision (a), and who in the commission of that felony personally used a firearm, shall be punished by a term of imprisonment of 10 years in the state prison, which shall be imposed in addition and consecutive to the punishment prescribed for that felony. The firearm need not be operable or loaded for this enhancement to apply.

(c) Notwithstanding any other provision of law, any person who is convicted of a felony specified in subdivision (a), and who in the commission of that felony intentionally and personally discharged a firearm, shall be punished by a term of imprisonment of 20 years in the state prison, which shall be imposed in addition and consecutive to the punishment prescribed for that felony.

(d) Notwithstanding any other provision of law, any person who is convicted of a felony specified in subdivision (a), Section 246, or subdivision (c) or (d) of Section 12034, and who in the commission of that felony intentionally and personally discharged a firearm and proximately caused great bodily injury, as defined in Section 12022.7, to any person other than an accomplice, shall be punished by a term of imprisonment of 25 years to life in the state prison, which shall be imposed in addition and consecutive to the punishment prescribed for that felony.

(e) (1) The enhancements specified in this section shall apply to any person charged as a principal in the commission of an offense that includes an allegation pursuant to this section when a violation of both this section and subdivision (b) of Section 186.22 are pled and proved.

(2) An enhancement for participation in a criminal street gang pursuant to Chapter 11 (commencing with Section 186.20) of Title 7 of Part 1, shall not be imposed on a person in addition to an

enhancement imposed pursuant to this subdivision, unless the person personally used or personally discharged a firearm in the commission of the offense.

(f) Only one additional term of imprisonment under this section shall be imposed per person for each crime. If more than one enhancement per person is found true under this section, the court shall impose upon that person the enhancement that provides the longest term of imprisonment. An enhancement involving a firearm specified in Section 12021.5, 12022, 12022.3, 12022.4, 12022.5, or 12022.55 shall not be imposed on a person in addition to an enhancement imposed pursuant to this section. An enhancement for great bodily injury as defined in Section 12022.7, 12022.8, or 12022.9 shall not be imposed on a person in addition to an enhancement imposed pursuant to this section.

(g) Notwithstanding any other provision of law, probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, any person found to come within the provisions of this section.

(h) Notwithstanding Section 1385 or any other provision of law, the court shall not strike an allegation under this section or a finding bringing a person within the provisions of this section.

(i) The total amount of credits awarded pursuant to Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 or pursuant to Section 4019 or any other provision of law shall not exceed 15 percent of the total term of imprisonment imposed on a defendant upon whom a sentence is imposed pursuant to this section.

(j) For the penalties in this section to apply, the existence of any fact required under subdivision (b), (c), or (d) shall be alleged in the information or indictment and either admitted by the defendant in open court or found to be true by the trier of fact. When an enhancement specified in this section has been admitted or found to be true, the court shall impose punishment pursuant to this section rather than imposing punishment authorized under any other provision of law, unless another provision of law provides for a greater penalty or a longer term of imprisonment.

(k) When a person is found to have used or discharged a firearm in the commission of an offense that includes an allegation pursuant to this section and the firearm is owned by that person, a coparticipant, or a coconspirator, the court shall order that the firearm be deemed a nuisance and disposed of in the manner provided in Section 12028.

(*l*) The enhancements specified in this section shall not apply to the lawful use or discharge of a firearm by a public officer, as provided in Section 196, or by any person in lawful self-defense, lawful defense of another, or lawful defense of property, as provided in Sections 197, 198, and 198.5.

SEC. 5.5. Section 12022.53 of the Penal Code is amended to read:

12022.53. (a) This section applies to the following felonies:

(1) Section 187 (murder).
(2) Sections 203 and 205 (mayhem).
(3) Sections 207, 209, and 209.5 (kidnapping).
(4) Section 211 (robbery).
(5) Section 215 (carjacking).
(6) Section 220 (assault with intent to commit a specified felony).
(7) Subdivision (d) of Section 245 (assault with a firearm on a peace officer or firefighter).
(8) Sections 261 and 262 (rape).
(9) Section 264.1 (rape or penetration by a foreign object in concert).
(10) Section 286 (sodomy).
(11) Sections 288 and 288.5 (lewd act on a child).
(12) Section 288a (oral copulation).
(13) Section 289 (penetration by a foreign object).
(14) Section 4500 (assault by life prisoner).
(15) Section 4501 (assault by prisoner).
(16) Section 4503 (holding a hostage by prisoner).
(17) Any felony punishable by death or imprisonment in the state prison for life.
(18) Any attempt to commit a crime listed in this subdivision other than an assault.

(b) Notwithstanding any other provision of law, any person who is convicted of a felony specified in subdivision (a), and who in the commission of that felony personally used a firearm, shall be punished by a term of imprisonment of 10 years in the state prison, which shall be imposed in addition and consecutive to the punishment prescribed for that felony. The firearm need not be operable or loaded for this enhancement to apply.

(c) Notwithstanding any other provision of law, any person who is convicted of a felony specified in subdivision (a), and who in the commission of that felony intentionally and personally discharged a firearm, shall be punished by a term of imprisonment of 20 years in the state prison, which shall be imposed in addition and consecutive to the punishment prescribed for that felony.

(d) Notwithstanding any other provision of law, any person who is convicted of a felony specified in subdivision (a), Section 246, or subdivision (c) or (d) of Section 12034, and who in the commission of that felony intentionally and personally discharged a firearm and proximately caused great bodily injury, as defined in Section 12022.7, or death, to any person other than an accomplice, shall be punished by a term of imprisonment of 25 years to life in the state prison, which shall be imposed in addition and consecutive to the punishment prescribed for that felony.

(e) (1) The enhancements specified in this section shall apply to any person charged as a principal in the commission of an offense that includes an allegation pursuant to this section when a violation of

both this section and subdivision (b) of Section 186.22 are pled and proved.

(2) An enhancement for participation in a criminal street gang pursuant to Chapter 11 (commencing with Section 186.20) of Title 7 of Part 1, shall not be imposed on a person in addition to an enhancement imposed pursuant to this subdivision, unless the person personally used or personally discharged a firearm in the commission of the offense.

(f) Only one additional term of imprisonment under this section shall be imposed per person for each crime. If more than one enhancement per person is found true under this section, the court shall impose upon that person the enhancement that provides the longest term of imprisonment. An enhancement involving a firearm specified in Section 12021.5, 12022, 12022.3, 12022.4, 12022.5, or 12022.55 shall not be imposed on a person in addition to an enhancement imposed pursuant to this section. An enhancement for great bodily injury as defined in Section 12022.7, 12022.8, or 12022.9 shall not be imposed on a person in addition to an enhancement imposed pursuant to subdivision (d).

(g) Notwithstanding any other provision of law, probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, any person found to come within the provisions of this section.

(h) Notwithstanding Section 1385 or any other provision of law, the court shall not strike an allegation under this section or a finding bringing a person within the provisions of this section.

(i) The total amount of credits awarded pursuant to Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 or pursuant to Section 4019 or any other provision of law shall not exceed 15 percent of the total term of imprisonment imposed on a defendant upon whom a sentence is imposed pursuant to this section.

(j) For the penalties in this section to apply, the existence of any fact required under subdivision (b), (c), or (d) shall be alleged in the information or indictment and either admitted by the defendant in open court or found to be true by the trier of fact. When an enhancement specified in this section has been admitted or found to be true, the court shall impose punishment pursuant to this section rather than imposing punishment authorized under any other provision of law, unless another provision of law provides for a greater penalty or a longer term of imprisonment.

(k) When a person is found to have used or discharged a firearm in the commission of an offense that includes an allegation pursuant to this section and the firearm is owned by that person, a coparticipant, or a coconspirator, the court shall order that the firearm be deemed a nuisance and disposed of in the manner provided in Section 12028.

(*l*) The enhancements specified in this section shall not apply to the lawful use or discharge of a firearm by a public officer, as provided

in Section 196, or by any person in lawful self-defense, lawful defense of another, or lawful defense of property, as provided in Sections 197, 198, and 198.5.

SEC. 6. Section 676 of the Welfare and Institutions Code is amended to read:

676. (a) Unless requested by the minor concerning whom the petition has been filed and any parent or guardian present, the public shall not be admitted to a juvenile court hearing. Nothing in this section shall preclude the attendance of up to two family members of a prosecuting witness for the support of that witness, as authorized by Section 868.5 of the Penal Code. The judge or referee may nevertheless admit those persons he or she deems to have a direct and legitimate interest in the particular case or the work of the court. However, except as provided in subdivision (b), members of the public shall be admitted, on the same basis as they may be admitted to trials in a court of criminal jurisdiction, to hearings concerning petitions filed pursuant to Section 602 alleging that a minor is a person described in Section 602 by reason of the violation of any one of the following offenses:

(1) Murder.

(2) Arson of an inhabited building.

(3) Robbery while armed with a dangerous or deadly weapon.

(4) Rape with force or violence or threat of great bodily harm.

(5) Sodomy by force, violence, duress, menace, or threat of great bodily harm.

(6) Oral copulation by force, violence, duress, menace, or threat of great bodily harm.

(7) Any offense specified in subdivision (a) of Section 289 of the Penal Code.

(8) Kidnapping for ransom.

(9) Kidnapping in violation of subdivision (b) of Section 209 of the Penal Code.

(10) Kidnapping with bodily harm.

(11) Assault with intent to murder or attempted murder.

(12) Assault with a firearm or destructive device.

(13) Assault by any means of force likely to produce great bodily injury.

(14) Discharge of a firearm into an inhabited or occupied building.

(15) Any offense described in Section 1203.09 of the Penal Code.

(16) Any offense described in Section 12022.5 of the Penal Code.

(17) Any felony offense in which a minor personally used a weapon listed in subdivision (a) of Section 12020 of the Penal Code.

(18) Burglary of an inhabited dwelling house or trailer coach, as defined in Section 635 of the Vehicle Code, or the inhabited portion of any other building, if the minor previously has been adjudged a ward of the court by reason of the commission of any offense listed in this section, including an offense listed in this paragraph.

(19) Any felony offense described in Section 136.1 or 137 of the Penal Code.

(20) Any offense as specified in Sections 11351, 11351.5, 11352, 11378, 11378.5, 11379, and 11379.5 of the Health and Safety Code.

(21) Criminal street gang activity which constitutes a felony pursuant to Section 186.22 of the Penal Code.

(22) Manslaughter as specified in Section 192 of the Penal Code.

(23) Driveby shooting or discharge of a weapon from or at a motor vehicle as specified in Sections 246, 247, and 12034 of the Penal Code.

(24) Any crime committed with an assault weapon, as defined in Section 12276 of the Penal Code, including possession of an assault weapon as specified in subdivision (b) of Section 12280 of the Penal Code.

(25) Carjacking, while armed with a dangerous or deadly weapon.

(26) Kidnapping, in violation of Section 209.5 of the Penal Code.

(27) Torture, as described in Sections 206 and 206.1 of the Penal Code.

(28) Aggravated mayhem, in violation of Section 205 of the Penal Code.

(b) Where the petition filed alleges that the minor is a person described in Section 602 by reason of the commission of rape with force or violence or great bodily harm; sodomy by force, violence, duress, menace, or threat of great bodily harm; oral copulation by force, violence, duress, menace, or threat of great bodily harm; or any offense specified in Section 289 of the Penal Code, members of the public shall not be admitted to the hearing in either of the following instances:

(1) Upon a motion for a closed hearing by the district attorney, who shall make the motion if so requested by the victim.

(2) During the victim's testimony, if, at the time of the offense the victim was under 16 years of age.

(c) The name of a minor found to have committed one of the offenses listed in subdivision (a) shall not be confidential, unless the court, for good cause, so orders.

(d) Notwithstanding Sections 827 and 828 and subject to subdivisions (e) and (f), when a petition is sustained for any offense listed in subdivision (a), the charging petition, the minutes of the proceeding, and the orders of adjudication and disposition of the court that are contained in the court file shall be available for public inspection. Nothing in this subdivision shall be construed to authorize public access to any other documents in the court file.

(e) The probation officer or any party may petition the juvenile court to prohibit disclosure to the public of any file or record. The juvenile court shall prohibit the disclosure if it appears that the harm to the minor, victims, witnesses, or public from the public disclosure outweighs the benefit of public knowledge.

(f) Nothing in this section shall be applied to limit the disclosure of information as otherwise provided for by law.

SEC. 6.5. Section 676 of the Welfare and Institutions Code is amended to read:

676. (a) Unless requested by the minor concerning whom the petition has been filed and any parent or guardian present, the public shall not be admitted to a juvenile court hearing. Nothing in this section shall preclude the attendance of up to two family members of a prosecuting witness for the support of that witness, as authorized by Section 868.5 of the Penal Code. The judge or referee may nevertheless admit those persons he or she deems to have a direct and legitimate interest in the particular case or the work of the court. However, except as provided in subdivision (b), members of the public shall be admitted, on the same basis as they may be admitted to trials in a court of criminal jurisdiction, to hearings concerning petitions filed pursuant to Section 602 alleging that a minor is a person described in Section 602 by reason of the violation of any one of the following offenses:

(1) Murder.

(2) Arson of an inhabited building.

(3) Robbery while armed with a dangerous or deadly weapon.

(4) Rape with force or violence or threat of great bodily harm.

(5) Sodomy by force, violence, duress, menace, or threat of great bodily harm.

(6) Oral copulation by force, violence, duress, menace, or threat of great bodily harm.

(7) Any offense specified in subdivision (a) of Section 289 of the Penal Code.

(8) Kidnapping for ransom.

(9) Kidnapping in violation of subdivision (b) of Section 209 of the Penal Code.

(10) Kidnapping with bodily harm.

(11) Assault with intent to murder or attempted murder.

(12) Assault with a firearm or destructive device.

(13) Assault by any means of force likely to produce great bodily injury.

(14) Discharge of a firearm into an inhabited or occupied building.

(15) Any offense described in Section 1203.09 of the Penal Code.

(16) Any offense described in Section 12022.5 or 12022.53 of the Penal Code.

(17) Any felony offense in which a minor personally used a weapon listed in subdivision (a) of Section 12020 of the Penal Code.

(18) Burglary of an inhabited dwelling house or trailer coach, as defined in Section 635 of the Vehicle Code, or the inhabited portion of any other building, if the minor previously has been adjudged a ward of the court by reason of the commission of any offense listed in this section, including an offense listed in this paragraph.

(19) Any felony offense described in Section 136.1 or 137 of the Penal Code.

(20) Any offense as specified in Sections 11351, 11351.5, 11352, 11378, 11378.5, 11379, and 11379.5 of the Health and Safety Code.

(21) Criminal street gang activity which constitutes a felony pursuant to Section 186.22 of the Penal Code.

(22) Manslaughter as specified in Section 192 of the Penal Code.

(23) Driveby shooting or discharge of a weapon from or at a motor vehicle as specified in Sections 246, 247, and 12034 of the Penal Code.

(24) Any crime committed with an assault weapon, as defined in Section 12276 of the Penal Code, including possession of an assault weapon as specified in subdivision (b) of Section 12280 of the Penal Code.

(25) Carjacking, while armed with a dangerous or deadly weapon.

(26) Kidnapping, in violation of Section 209.5 of the Penal Code.

(27) Torture, as described in Sections 206 and 206.1 of the Penal Code.

(28) Aggravated mayhem, in violation of Section 205 of the Penal Code.

(b) Where the petition filed alleges that the minor is a person described in Section 602 by reason of the commission of rape with force or violence or great bodily harm; sodomy by force, violence, duress, menace, or threat of great bodily harm; oral copulation by force, violence, duress, menace, or threat of great bodily harm; or any offense specified in Section 289 of the Penal Code, members of the public shall not be admitted to the hearing in either of the following instances:

(1) Upon a motion for a closed hearing by the district attorney, who shall make the motion if so requested by the victim.

(2) During the victim's testimony, if, at the time of the offense, the victim was under 16 years of age.

(c) The name of a minor found to have committed one of the offenses listed in subdivision (a) shall not be confidential, unless the court, for good cause, so orders.

(d) Notwithstanding Sections 827 and 828 and subject to subdivisions (e) and (f), when a petition is sustained for any offense listed in subdivision (a), the charging petition, the minutes of the proceeding, and the orders of adjudication and disposition of the court that are contained in the court file shall be available for public inspection. Nothing in this subdivision shall be construed to authorize public access to any other documents in the court file.

(e) The probation officer or any party may petition the juvenile court to prohibit disclosure to the public of any file or record. The juvenile court shall prohibit the disclosure if it appears that the harm to the minor, victims, witnesses, or public from the public disclosure outweighs the benefit of public knowledge.

(f) Nothing in this section shall be applied to limit the disclosure of information as otherwise provided for by law.

SEC. 7. Section 707 of the Welfare and Institutions Code is amended to read:

707. (a) In any case in which a minor is alleged to be a person described in Section 602 by reason of the violation, when he or she was 16 years of age or older, of any criminal statute or ordinance except those listed in subdivision (b), upon motion of the petitioner made prior to the attachment of jeopardy the court shall cause the probation officer to investigate and submit a report on the behavioral patterns and social history of the minor being considered for a determination of unfitness. Following submission and consideration of the report, and of any other relevant evidence which the petitioner or the minor may wish to submit, the juvenile court may find that the minor is not a fit and proper subject to be dealt with under the juvenile court law if it concludes that the minor would not be amenable to the care, treatment, and training program available through the facilities of the juvenile court, based upon an evaluation of the following criteria:

(1) The degree of criminal sophistication exhibited by the minor.

(2) Whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction.

(3) The minor's previous delinquent history.

(4) Success of previous attempts by the juvenile court to rehabilitate the minor.

(5) The circumstances and gravity of the offense alleged in the petition to have been committed by the minor.

A determination that the minor is not a fit and proper subject to be dealt with under the juvenile court law may be based on any one or a combination of the factors set forth above, which shall be recited in the order of unfitness. In any case in which a hearing has been noticed pursuant to this section, the court shall postpone the taking of a plea to the petition until the conclusion of the fitness hearing, and no plea which may already have been entered shall constitute evidence at the hearing.

(b) Subdivision (c) shall be applicable in any case in which a minor is alleged to be a person described in Section 602 by reason of the violation, when he or she was 16 years of age or older, of one of the following offenses:

(1) Murder.

(2) Arson, as provided in subdivision (a) or (b) of Section 451 of the Penal Code.

(3) Robbery while armed with a dangerous or deadly weapon.

(4) Rape with force or violence or threat of great bodily harm.

(5) Sodomy by force, violence, duress, menace, or threat of great bodily harm.

(6) Lewd or lascivious act as provided in subdivision (b) of Section 288 of the Penal Code.

(7) Oral copulation by force, violence, duress, menace, or threat of great bodily harm.

(8) Any offense specified in subdivision (a) of Section 289 of the Penal Code.

(9) Kidnapping for ransom.

(10) Kidnapping in violation of subdivision (b) of Section 209 of the Penal Code.

(11) Kidnapping with bodily harm.

(12) Attempted murder.

(13) Assault with a firearm or destructive device.

(14) Assault by any means of force likely to produce great bodily injury.

(15) Discharge of a firearm into an inhabited or occupied building.

(16) Any offense described in Section 1203.09 of the Penal Code.

(17) Any offense described in Section 12022.5 of the Penal Code.

(18) Any felony offense in which the minor personally used a weapon listed in subdivision (a) of Section 12020 of the Penal Code.

(19) Any felony offense described in Section 136.1 or 137 of the Penal Code.

(20) Manufacturing, compounding, or selling one-half ounce or more of any salt or solution of a controlled substance specified in subdivision (e) of Section 11055 of the Health and Safety Code.

(21) Any violent felony, as defined in subdivision (c) of Section 667.5 of the Penal Code, which would also constitute a felony violation of subdivision (b) of Section 186.22 of the Penal Code.

(22) Escape, by the use of force or violence, from any county juvenile hall, home, ranch, camp, or forestry camp in violation of subdivision (b) of Section 871 where great bodily injury is intentionally inflicted upon an employee of the juvenile facility during the commission of the escape.

(23) Torture as described in Sections 206 and 206.1 of the Penal Code.

(24) Aggravated mayhem, as described in Section 205 of the Penal Code.

(25) Carjacking, as described in Section 215 of the Penal Code, while armed with a dangerous or deadly weapon.

(26) Kidnapping, as punishable in Section 209.5 of the Penal Code.

(27) The offense described in subdivision (c) of Section 12034 of the Penal Code.

(28) The offense described in Section 12308 of the Penal Code.

(c) With regard to a minor alleged to be a person described in Section 602 by reason of the violation, when he or she was 16 years of age or older, of any of the offenses listed in subdivision (b), upon motion of the petitioner made prior to the attachment of jeopardy the court shall cause the probation officer to investigate and submit a report on the behavioral patterns and social history of the minor being considered for a determination of unfitness. Following submission and consideration of the report, and of any other relevant evidence which the petitioner or the minor may wish to submit the minor shall be presumed to be not a fit and proper subject to be dealt with under the juvenile court law unless the juvenile court concludes, based upon evidence, which evidence may be of extenuating or

mitigating circumstances, that the minor would be amenable to the care, treatment, and training program available through the facilities of the juvenile court based upon an evaluation of each of the following criteria:

(1) The degree of criminal sophistication exhibited by the minor.

(2) Whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction.

(3) The minor's previous delinquent history.

(4) Success of previous attempts by the juvenile court to rehabilitate the minor.

(5) The circumstances and gravity of the offenses alleged in the petition to have been committed by the minor.

A determination that the minor is a fit and proper subject to be dealt with under the juvenile court law shall be based on a finding of amenability after consideration of the criteria set forth above, and findings therefor recited in the order as to each of the above criteria that the minor is fit and proper under each and every one of the above criteria. In making a finding of fitness, the court may consider extenuating or mitigating circumstances in evaluating each of the above criteria. In any case in which a hearing has been noticed pursuant to this section, the court shall postpone the taking of a plea to the petition until the conclusion of the fitness hearing and no plea which may already have been entered shall constitute evidence at the hearing.

(d) (1) In any case in which a minor is alleged to be a person described in Section 602 by reason of the violation, when he or she had attained the age of 14 years but had not attained the age of 16 years, of any of the offenses set forth in paragraph (2), upon motion of the petitioner made prior to the attachment of jeopardy the court shall cause the probation officer to investigate and submit a report on the behavioral patterns and social history of the minor being considered for a determination of unfitness. Following submission and consideration of the report, and of any other relevant evidence that the petitioner or the minor may wish to submit, the juvenile court may find that the minor is not a fit and proper subject to be dealt with under the juvenile court law if it concludes that the minor would not be amenable to the care, treatment, and training program available through the facilities of the juvenile court, based upon an evaluation of the following criteria:

(A) The degree of criminal sophistication exhibited by the minor.

(B) Whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction.

(C) The minor's previous delinquent history.

(D) Success of previous attempts by the juvenile court to rehabilitate the minor.

(E) The circumstances and gravity of the offense alleged in the petition to have been committed by the minor.

A determination that the minor is not a fit and proper subject to be dealt with under the juvenile court law may be based on any one or a combination of the factors set forth above, which shall be recited in the order of unfitness. In any case in which a hearing has been noticed pursuant to this subdivision, the court shall postpone the taking of a plea to the petition until the conclusion of the fitness hearing, and no plea that may already have been entered shall constitute evidence at the hearing.

(2) Paragraph (1) shall be applicable in any case in which a minor is alleged to be a person described in Section 602 by reason of the violation, when he or she had attained the age of 14 years but had not attained the age of 16 years, of one of the following offenses:

(A) Murder.

(B) Robbery in which the minor personally used a firearm.

(C) Rape with force or violence or threat of great bodily harm.

(D) Sodomy by force, violence, duress, menace, or threat of great bodily harm.

(E) Oral copulation by force, violence, duress, menace, or threat of great bodily harm.

(F) The offense specified in subdivision (a) of Section 289 of the Penal Code.

(G) Kidnapping for ransom.

(H) Kidnapping in violation of subdivision (b) of Section 209 of the Penal Code.

(I) Kidnapping with bodily harm.

(J) Kidnapping, in violation of Section 209.5 of the Penal Code.

(K) The offense described in subdivision (c) of Section 12034 of the Penal Code, in which the minor personally used a firearm.

(L) Personally discharging a firearm into an inhabited or occupied building.

(M) Manufacturing, compounding, or selling one-half ounce or more of any salt or solution of a controlled substance specified in subdivision (e) of Section 11055 of the Health and Safety Code.

(N) Escape, by the use of force or violence, from any county juvenile hall, home, ranch, camp, or forestry camp in violation of subdivision (b) of Section 871 where great bodily injury is intentionally inflicted upon an employee of the juvenile facility during the commission of the escape.

(O) Torture, as described in Section 206 of the Penal Code.

(P) Aggravated mayhem, as described in Section 205 of the Penal Code.

(Q) Assault with a firearm in which the minor personally used the firearm.

(R) Attempted murder.

(S) Rape in which the minor personally used a firearm.

(T) Burglary in which the minor personally used a firearm.

(U) Kidnapping in which the minor personally used a firearm.

(V) The offense described in Section 12308 of the Penal Code.

(W) Carjacking, in which the minor personally used a firearm.

(e) This subdivision shall apply to a minor alleged to be a person described in Section 602 by reason of the violation, when he or she had attained the age of 14 years but had not attained the age of 16 years, of the offense of murder in which it is alleged in the petition that one of the following exists:

(1) In the case of murder in the first or second degree, the minor personally killed the victim.

(2) In the case of murder in the first or second degree, the minor, acting with the intent to kill the victim, aided, abetted, counseled, commanded, induced, solicited, requested, or assisted any person to kill the victim.

(3) In the case of murder in the first degree, while not the actual killer, the minor, acting with reckless indifference to human life and as a major participant in a felony enumerated in paragraph (17) of subdivision (a) of Section 190.2 of the Penal Code, or an attempt to commit that felony, aided, abetted, counseled, commanded, induced, solicited, requested, or assisted in the commission or attempted commission of that felony and the commission or attempted commission of that felony or the immediate flight therefrom resulted in the death of the victim.

Upon motion of the petitioner made prior to the attachment of jeopardy, the court shall cause the probation officer to investigate and submit a report on the behavioral patterns and social history of the minor being considered for a determination of unfitness. Following submission and consideration of the report, and of any other relevant evidence which the petitioner or the minor may wish to submit, the minor shall be presumed to be not a fit and proper subject to be dealt with under the juvenile court law unless the juvenile court concludes, based upon evidence, which evidence may be of extenuating or mitigating circumstances, that the minor would be amenable to the care, treatment, and training program available through the facilities of the juvenile court based upon an evaluation of each of the following criteria:

(A) The degree of criminal sophistication exhibited by the minor.

(B) Whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction.

(C) The minor's previous delinquent history.

(D) Success of previous attempts by the juvenile court to rehabilitate the minor.

(E) The circumstances and gravity of the offenses alleged in the petition to have been committed by the minor.

A determination that the minor is a fit and proper subject to be dealt with under the juvenile court law shall be based on a finding of amenability after consideration of the criteria set forth above, and findings therefor recited in the order as to each of the above criteria that the minor is fit and proper under each and every one of the above criteria. In making a finding of fitness, the court may consider

extenuating or mitigating circumstances in evaluating each of the above criteria. In any case in which a hearing has been noticed pursuant to this section, the court shall postpone the taking of a plea to the petition until the conclusion of the fitness hearing and no plea which may already have been entered shall constitute evidence at the hearing.

(f) Any report submitted by a probation officer pursuant to this section regarding the behavioral patterns and social history of the minor being considered for a determination of unfitness shall include any written or oral statement offered by the victim, the victim's parent or guardian if the victim is a minor, or if the victim has died, the victim's next of kin, as authorized by subdivision (b) of Section 656.2. Victims' statements shall be considered by the court to the extent they are relevant to the court's determination of unfitness.

SEC. 7.5. Section 707 of the Welfare and Institutions Code is amended to read:

707. (a) In any case in which a minor is alleged to be a person described in Section 602 by reason of the violation, when he or she was 16 years of age or older, of any criminal statute or ordinance except those listed in subdivision (b), upon motion of the petitioner made prior to the attachment of jeopardy the court shall cause the probation officer to investigate and submit a report on the behavioral patterns and social history of the minor being considered for a determination of unfitness. Following submission and consideration of the report, and of any other relevant evidence which the petitioner or the minor may wish to submit, the juvenile court may find that the minor is not a fit and proper subject to be dealt with under the juvenile court law if it concludes that the minor would not be amenable to the care, treatment, and training program available through the facilities of the juvenile court, based upon an evaluation of the following criteria:

(1) The degree of criminal sophistication exhibited by the minor.

(2) Whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction.

(3) The minor's previous delinquent history.

(4) Success of previous attempts by the juvenile court to rehabilitate the minor.

(5) The circumstances and gravity of the offense alleged in the petition to have been committed by the minor.

A determination that the minor is not a fit and proper subject to be dealt with under the juvenile court law may be based on any one or a combination of the factors set forth above, which shall be recited in the order of unfitness. In any case in which a hearing has been noticed pursuant to this section, the court shall postpone the taking of a plea to the petition until the conclusion of the fitness hearing, and no plea which may already have been entered shall constitute evidence at the hearing.

(b) Subdivision (c) shall be applicable in any case in which a minor is alleged to be a person described in Section 602 by reason of the violation, when he or she was 16 years of age or older, of one of the following offenses:

(1) Murder.

(2) Arson, as provided in subdivision (a) or (b) of Section 451 of the Penal Code.

(3) Robbery while armed with a dangerous or deadly weapon.

(4) Rape with force or violence or threat of great bodily harm.

(5) Sodomy by force, violence, duress, menace, or threat of great bodily harm.

(6) Lewd or lascivious act as provided in subdivision (b) of Section 288 of the Penal Code.

(7) Oral copulation by force, violence, duress, menace, or threat of great bodily harm.

(8) Any offense specified in subdivision (a) of Section 289 of the Penal Code.

(9) Kidnapping for ransom.

(10) Kidnapping in violation of subdivision (b) of Section 209 of the Penal Code.

(11) Kidnapping with bodily harm.

(12) Attempted murder.

(13) Assault with a firearm or destructive device.

(14) Assault by any means of force likely to produce great bodily injury.

(15) Discharge of a firearm into an inhabited or occupied building.

(16) Any offense described in Section 1203.09 of the Penal Code.

(17) Any offense described in Section 12022.5 or 12022.53 of the Penal Code.

(18) Any felony offense in which the minor personally used a weapon listed in subdivision (a) of Section 12020 of the Penal Code.

(19) Any felony offense described in Section 136.1 or 137 of the Penal Code.

(20) Manufacturing, compounding, or selling one-half ounce or more of any salt or solution of a controlled substance specified in subdivision (e) of Section 11055 of the Health and Safety Code.

(21) Any violent felony, as defined in subdivision (c) of Section 667.5 of the Penal Code, which would also constitute a felony violation of subdivision (b) of Section 186.22 of the Penal Code.

(22) Escape, by the use of force or violence, from any county juvenile hall, home, ranch, camp, or forestry camp in violation of subdivision (b) of Section 871 where great bodily injury is intentionally inflicted upon an employee of the juvenile facility during the commission of the escape.

(23) Torture, as described in Sections 206 and 206.1 of the Penal Code.

(24) Aggravated mayhem, as described in Section 205 of the Penal Code.

(25) Carjacking, as described in Section 215 of the Penal Code, while armed with a dangerous or deadly weapon.

(26) Kidnapping, as punishable in Section 209.5 of the Penal Code.

(27) The offense described in subdivision (c) of Section 12034 of the Penal Code.

(28) The offense described in Section 12308 of the Penal Code.

(c) With regard to a minor alleged to be a person described in Section 602 by reason of the violation, when he or she was 16 years of age or older, of any of the offenses listed in subdivision (b), upon motion of the petitioner made prior to the attachment of jeopardy the court shall cause the probation officer to investigate and submit a report on the behavioral patterns and social history of the minor being considered for a determination of unfitness. Following submission and consideration of the report, and of any other relevant evidence which the petitioner or the minor may wish to submit the minor shall be presumed to be not a fit and proper subject to be dealt with under the juvenile court law unless the juvenile court concludes, based upon evidence, which evidence may be of extenuating or mitigating circumstances, that the minor would be amenable to the care, treatment, and training program available through the facilities of the juvenile court based upon an evaluation of each of the following criteria:

(1) The degree of criminal sophistication exhibited by the minor.

(2) Whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction.

(3) The minor's previous delinquent history.

(4) Success of previous attempts by the juvenile court to rehabilitate the minor.

(5) The circumstances and gravity of the offenses alleged in the petition to have been committed by the minor.

A determination that the minor is a fit and proper subject to be dealt with under the juvenile court law shall be based on a finding of amenability after consideration of the criteria set forth above, and findings therefor recited in the order as to each of the above criteria that the minor is fit and proper under each and every one of the above criteria. In making a finding of fitness, the court may consider extenuating or mitigating circumstances in evaluating each of the above criteria. In any case in which a hearing has been noticed pursuant to this section, the court shall postpone the taking of a plea to the petition until the conclusion of the fitness hearing and no plea which may already have been entered shall constitute evidence at the hearing.

(d) (1) In any case in which a minor is alleged to be a person described in Section 602 by reason of the violation, when he or she had attained the age of 14 years but had not attained the age of 16 years, of any of the offenses set forth in paragraph (2), upon motion of the petitioner made prior to the attachment of jeopardy the court shall cause the probation officer to investigate and submit a report on

the behavioral patterns and social history of the minor being considered for a determination of unfitness. Following submission and consideration of the report, and of any other relevant evidence that the petitioner or the minor may wish to submit, the juvenile court may find that the minor is not a fit and proper subject to be dealt with under the juvenile court law if it concludes that the minor would not be amenable to the care, treatment, and training program available through the facilities of the juvenile court, based upon an evaluation of the following criteria:

(A) The degree of criminal sophistication exhibited by the minor.

(B) Whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction.

(C) The minor's previous delinquent history.

(D) Success of previous attempts by the juvenile court to rehabilitate the minor.

(E) The circumstances and gravity of the offense alleged in the petition to have been committed by the minor.

A determination that the minor is not a fit and proper subject to be dealt with under the juvenile court law may be based on any one or a combination of the factors set forth above, which shall be recited in the order of unfitness. In any case in which a hearing has been noticed pursuant to this subdivision, the court shall postpone the taking of a plea to the petition until the conclusion of the fitness hearing, and no plea that may already have been entered shall constitute evidence at the hearing.

(2) Paragraph (1) shall be applicable in any case in which a minor is alleged to be a person described in Section 602 by reason of the violation, when he or she had attained the age of 14 years but had not attained the age of 16 years, of one of the following offenses:

(A) Murder.

(B) Robbery in which the minor personally used a firearm.

(C) Rape with force or violence or threat of great bodily harm.

(D) Sodomy by force, violence, duress, menace, or threat of great bodily harm.

(E) Oral copulation by force, violence, duress, menace, or threat of great bodily harm.

(F) The offense specified in subdivision (a) of Section 289 of the Penal Code.

(G) Kidnapping for ransom.

(H) Kidnapping in violation of subdivision (b) of Section 209 of the Penal Code.

(I) Kidnapping with bodily harm.

(J) Kidnapping, in violation of Section 209.5 of the Penal Code.

(K) The offense described in subdivision (c) of Section 12034 of the Penal Code, in which the minor personally used a firearm.

(L) Personally discharging a firearm into an inhabited or occupied building.

(M) Manufacturing, compounding, or selling one-half ounce or more of any salt or solution of a controlled substance specified in subdivision (e) of Section 11055 of the Health and Safety Code.

(N) Escape, by the use of force or violence, from any county juvenile hall, home, ranch, camp, or forestry camp in violation of subdivision (b) of Section 871 where great bodily injury is intentionally inflicted upon an employee of the juvenile facility during the commission of the escape.

(O) Torture, as described in Section 206 of the Penal Code.

(P) Aggravated mayhem, as described in Section 205 of the Penal Code.

(Q) Assault with a firearm in which the minor personally used the firearm.

(R) Attempted murder.

(S) Rape in which the minor personally used a firearm.

(T) Burglary in which the minor personally used a firearm.

(U) Kidnapping in which the minor personally used a firearm.

(V) The offense described in Section 12308 of the Penal Code.

(W) Carjacking in which the minor personally used a firearm.

(e) This subdivision shall apply to a minor alleged to be a person described in Section 602 by reason of the violation, when he or she had attained the age of 14 years but had not attained the age of 16 years, of the offense of murder in which it is alleged in the petition that one of the following exists:

(1) In the case of murder in the first or second degree, the minor personally killed the victim.

(2) In the case of murder in the first or second degree, the minor, acting with the intent to kill the victim, aided, abetted, counseled, commanded, induced, solicited, requested, or assisted any person to kill the victim.

(3) In the case of murder in the first degree, while not the actual killer, the minor, acting with reckless indifference to human life and as a major participant in a felony enumerated in paragraph (17) of subdivision (a) of Section 190.2 of the Penal Code, or an attempt to commit that felony, aided, abetted, counseled, commanded, induced, solicited, requested, or assisted in the commission or attempted commission of that felony and the commission or attempted commission of that felony or the immediate flight therefrom resulted in the death of the victim.

Upon motion of the petitioner made prior to the attachment of jeopardy, the court shall cause the probation officer to investigate and submit a report on the behavioral patterns and social history of the minor being considered for a determination of unfitness. Following submission and consideration of the report, and of any other relevant evidence which the petitioner or the minor may wish to submit, the minor shall be presumed to be not a fit and proper subject to be dealt with under the juvenile court law unless the juvenile court concludes, based upon evidence, which evidence may

be of extenuating or mitigating circumstances, that the minor would be amenable to the care, treatment, and training program available through the facilities of the juvenile court based upon an evaluation of each of the following criteria:

(A) The degree of criminal sophistication exhibited by the minor.

(B) Whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction.

(C) The minor's previous delinquent history.

(D) Success of previous attempts by the juvenile court to rehabilitate the minor.

(E) The circumstances and gravity of the offenses alleged in the petition to have been committed by the minor.

A determination that the minor is a fit and proper subject to be dealt with under the juvenile court law shall be based on a finding of amenability after consideration of the criteria set forth above, and findings therefor recited in the order as to each of the above criteria that the minor is fit and proper under each and every one of the above criteria. In making a finding of fitness, the court may consider extenuating or mitigating circumstances in evaluating each of the above criteria. In any case in which a hearing has been noticed pursuant to this section, the court shall postpone the taking of a plea to the petition until the conclusion of the fitness hearing and no plea which may already have been entered shall constitute evidence at the hearing.

(f) Any report submitted by a probation officer pursuant to this section regarding the behavioral patterns and social history of the minor being considered for a determination of unfitness shall include any written or oral statement offered by the victim, the victim's parent or guardian if the victim is a minor, or if the victim has died, the victim's next of kin, as authorized by subdivision (b) of Section 656.2. Victims' statements shall be considered by the court to the extent they are relevant to the court's determination of unfitness.

SEC. 8. Section 828.1 of the Welfare and Institutions Code is amended to read:

828.1. (a) While the Legislature reaffirms its belief that juvenile criminal records, in general, should be confidential, it is the intent of the Legislature in enacting this section to provide for a limited exception to that confidentiality in cases involving serious acts of violence. Further, it is the intent of the Legislature that even in these selected cases the dissemination of juvenile criminal records be as limited as possible, consistent with the need to work with a student in an appropriate fashion, and the need to protect potentially vulnerable school staff and other students over whom the school staff exercises direct supervision and responsibility.

(b) Notwithstanding subdivision (a) of Section 828, a school district police or security department may provide written notice to the superintendent of the school district that a minor enrolled in a public school maintained by that school district, in kindergarten or

any of grades 1 to 12, inclusive, has been found by a court of competent jurisdiction to have illegally used, sold, or possessed a controlled substance as defined in Section 11007 of the Health and Safety Code or to have committed any crime listed in paragraphs (1) to (15), inclusive, or paragraphs (17) to (19), inclusive, or paragraphs (25) to (28), inclusive, of subdivision (b) of, or in paragraph (2) of subdivision (d) of, or subdivision (e) of, Section 707. The information may be expeditiously transmitted to any teacher, counselor, or administrator with direct supervisorial or disciplinary responsibility over the minor, who the superintendent or his or her designee, after consultation with the principal at the school of attendance, believes needs this information to work with the student in an appropriate fashion, to avoid being needlessly vulnerable or to protect other persons from needless vulnerability.

(c) Any information received by a teacher, counselor, or administrator pursuant to this section shall be received in confidence for the limited purpose for which it was provided and shall not be further disseminated by the teacher, counselor, or administrator. An intentional violation of the confidentiality provisions of this section is a misdemeanor, punishable by a fine not to exceed five hundred dollars ($500).

SEC. 9. It is the intent of the Legislature in enacting this act to do both of the following:

(a) Make all necessary cross-referencing changes to fully implement Assembly Bill 59 (Chapter 817 of the Statutes of 1997).

(b) Declare and clarify that subdivision (b) of Section 208 of the Penal Code provides for an enhanced penalty for a violation of Section 207 of the Penal Code and is not a distinct substantive crime.

SEC. 10. It is not the intent of the Legislature in enacting this act to change the law as interpreted by the Court of Appeal or the Supreme Court regarding the asportation standard necessary to establish a violation of Section 207 of the Penal Code.

SEC. 10.2. The amendment to subdivision (d) of Section 12022.53 of the Penal Code in Section 5.5 is intended to be declaratory of existing law and to clarify that the enhancement in that subdivision applies to causing great bodily injury or death.

SEC. 10.4. The amendment to subdivision (f) of Section 12022.53 of the Penal Code in Section 5.5 corrects a drafting error in the original statute. In enacting subdivision (f), the Legislature intended to preclude multiple enhancements for the infliction of great bodily injury on one victim for one crime when an enhancement was imposed under subdivision (d) of Section 12022.53. The Legislature did not intend to preclude the imposition of an enhancement for the infliction of great bodily injury under Section 12022.7, 12022.8, or 12022.9 in addition to the imposition of an enhancement for the use or discharge of a firearm under subdivision (b) or (c) of Section 12022.53 when the great bodily injury was not caused by discharging the firearm.

SEC. 11. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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

SEC. 12. Section 4.5 of this bill incorporates amendments to Section 1170.1 of the Penal Code proposed by both this bill and SB 1900. 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 1170.1 of the Penal Code, and (3) this bill is enacted after SB 1900, in which case Section 4 of this bill shall not become operative.

SEC. 13. Section 5.5 of this bill incorporates amendments to Section 12022.53 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 12022.53 of the Penal Code, and (3) this bill is enacted after SB 2168, in which case Section 5 of this bill shall not become operative.

SEC. 14. Section 6.5 of this bill incorporates amendments to Section 676 of the Welfare and Institutions 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 676 of the Welfare and Institutions Code, and (3) this bill is enacted after SB 2168, in which case Section 6 of this bill shall not become operative.

SEC. 15. Section 7.5 of this bill incorporates amendments to Section 707 of the Welfare and Institutions 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 707 of the Welfare and Institutions Code, and (3) this bill is enacted after SB 2168 in which case Section 7 of this bill shall not become operative.

SEC. 16. Sections 10.2 and 10.4 of this bill shall be operative only if (1) this bill and SB 2168 are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 12022.53 of the Penal Code, and (3) this bill is enacted after SB 2168.

CHAPTER 926

An act to amend Sections 1170, 1170.1, 1170.13, 1170.15, and 1170.95 of the Penal Code, relating to sentencing.

[Approved by Governor September 28, 1998. Filed with Secretary of State September 28, 1998.]

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

SECTION 1. Section 1170 of the Penal Code is amended to read:

1170. (a) (1) The Legislature finds and declares that the purpose of imprisonment for crime is punishment. This purpose is best served by terms proportionate to the seriousness of the offense with provision for uniformity in the sentences of offenders committing the same offense under similar circumstances. The Legislature further finds and declares that the elimination of disparity and the provision of uniformity of sentences can best be achieved by determinate sentences fixed by statute in proportion to the seriousness of the offense as determined by the Legislature to be imposed by the court with specified discretion.

(2) Paragraph (1) shall not be construed to preclude programs, including educational programs, that are designed to rehabilitate nonviolent, first-time felony offenders. The Legislature encourages the development of policies and programs designed to educate and rehabilitate nonviolent, first-time felony offenders consistent with the purpose of imprisonment.

(3) In any case in which the punishment prescribed by statute for a person convicted of a public offense is a term of imprisonment in the state prison of any specification of three time periods, the court shall sentence the defendant to one of the terms of imprisonment specified unless the convicted person is given any other disposition provided by law, including a fine, jail, probation, or the suspension of imposition or execution of sentence or is sentenced pursuant to subdivision (b) of Section 1168 because he or she had committed his or her crime prior to July 1, 1977. In sentencing the convicted person, the court shall apply the sentencing rules of the Judicial Council. The court, unless it determines that there are circumstances in mitigation of the punishment prescribed, shall also impose any other term that it is required by law to impose as an additional term. Nothing in this article shall affect any provision of law that imposes the death penalty, that authorizes or restricts the granting of probation or suspending the execution or imposition of sentence, or expressly provides for imprisonment in the state prison for life. In any case in which the amount of preimprisonment credit under Section 2900.5 or any other provision of law is equal to or exceeds any sentence imposed pursuant to this chapter, the entire sentence, including any period of parole under Section 3000, shall be deemed to have been

served and the defendant shall not be actually delivered to the custody of the Director of Corrections. However, that sentence shall be deemed a separate prior prison term under Section 667.5, and a copy of the judgment and other necessary documentation shall be forwarded to the Director of Corrections.

(b) When a judgment of imprisonment is to be imposed and the statute specifies three possible terms, the court shall order imposition of the middle term, unless there are circumstances in aggravation or mitigation of the crime. At least four days prior to the time set for imposition of judgment, either party or the victim, or the family of the victim if the victim is deceased, may submit a statement in aggravation or mitigation to dispute facts in the record or the probation officer's report, or to present additional facts. In determining whether there are circumstances that justify imposition of the upper or lower term, the court may consider the record in the case, the probation officer's report, other reports including reports received pursuant to Section 1203.03 and statements in aggravation or mitigation submitted by the prosecution, the defendant, or the victim, or the family of the victim if the victim is deceased, and any further evidence introduced at the sentencing hearing. The court shall set forth on the record the facts and reasons for imposing the upper or lower term. The court may not impose an upper term by using the fact of any enhancement upon which sentence is imposed under any provision of law. A term of imprisonment shall not be specified if imposition of sentence is suspended.

(c) The court shall state the reasons for its sentence choice on the record at the time of sentencing. The court shall also inform the defendant that as part of the sentence after expiration of the term he or she may be on parole for a period as provided in Section 3000.

(d) When a defendant subject to this section or subdivision (b) of Section 1168 has been sentenced to be imprisoned in the state prison and has been committed to the custody of the Director of Corrections, the court may, within 120 days of the date of commitment on its own motion, or at any time upon the recommendation of the Director of Corrections or the Board of Prison Terms, recall the sentence and commitment previously ordered and resentence the defendant in the same manner as if he or she had not previously been sentenced, provided the new sentence, if any, is no greater than the initial sentence. The resentence under this subdivision shall apply the sentencing rules of the Judicial Council so as to eliminate disparity of sentences and to promote uniformity of sentencing. Credit shall be given for time served.

(e) (1) Notwithstanding any other law and consistent with paragraph (1) of subdivision (a) of Section 1170, if the Director of Corrections or the Board of Prison Terms or both determine that a prisoner satisfies the criteria set forth in paragraph (2), the director

or the board may recommend to the court that the prisoner's sentence be recalled.

(2) The court shall have the discretion to resentence or recall if the court finds both of the following:

(A) The prisoner is terminally ill with an incurable condition caused by an illness or disease that would produce death within six months, as determined by a physician employed by the department.

(B) The conditions under which the prisoner would be released or receive treatment do not pose a threat to public safety.

The Board of Prison Terms shall make findings pursuant to this subdivision before making a recommendation for resentence or recall to the court. This subdivision does not apply to a prisoner sentenced to death or a term of life without the possibility of parole.

(3) Within 10 days of receipt of a positive recommendation by the director or the board, the court shall hold a hearing to consider whether the prisoner's sentence should be recalled.

(4) The prisoner or his or her family member or designee may request consideration for recall and resentencing by contacting the chief medical officer at the prison or the Director of Corrections. Upon receipt of the request, if the director determines that the prisoner satisfies the criteria set forth in paragraph (2), the director or board may recommend to the court that the prisoner's sentence be recalled. The director shall submit a recommendation for release within 30 days in the case of inmates sentenced to determinate terms and, in the case of inmates sentenced to indeterminate terms, the director may make a recommendation to the Board of Prison Terms with respect to the inmates who have applied under this section. The board shall consider this information and make an independent judgment pursuant to paragraph (2) and make findings related thereto before rejecting the request or making a recommendation to the court. This action shall be taken at the next lawfully noticed board meeting.

(5) Any recommendation for recall submitted to the court by the Director of Corrections or the Board of Prison Terms shall include one or more medical evaluations, a postrelease plan, and findings pursuant to paragraph (2).

(6) If possible, the matter shall be heard before the same judge of the court who sentenced the prisoner.

(f) Any sentence imposed under this article shall be subject to the provisions of Sections 3000 and 3057 and any other applicable provisions of law.

(g) A sentence to state prison for a determinate term for which only one term is specified, is a sentence to state prison under this section.

SEC. 1.5. Section 1170 of the Penal Code is amended to read:

1170. (a) (1) The Legislature finds and declares that the purpose of imprisonment for crime is punishment. This purpose is best served by terms proportionate to the seriousness of the offense

with provision for uniformity in the sentences of offenders committing the same offense under similar circumstances. The Legislature further finds and declares that the elimination of disparity and the provision of uniformity of sentences can best be achieved by determinate sentences fixed by statute in proportion to the seriousness of the offense as determined by the Legislature to be imposed by the court with specified discretion.

(2) Paragraph (1) shall not be construed to preclude programs, including educational programs, that are designed to rehabilitate nonviolent, first-time felony offenders. The Legislature encourages the development of policies and programs designed to educate and rehabilitate nonviolent, first-time felony offenders consistent with the purpose of imprisonment.

(3) In any case in which the punishment prescribed by statute for a person convicted of a public offense is a term of imprisonment in the state prison of any specification of three time periods, the court shall sentence the defendant to one of the terms of imprisonment specified unless the convicted person is given any other disposition provided by law, including a fine, jail, probation, or the suspension of imposition or execution of sentence or is sentenced pursuant to subdivision (b) of Section 1168 because he or she had committed his or her crime prior to July 1, 1977. In sentencing the convicted person, the court shall apply the sentencing rules of the Judicial Council. The court, unless it determines that there are circumstances in mitigation of the punishment prescribed, shall also impose any other term that it is required by law to impose as an additional term. Nothing in this article shall affect any provision of law that imposes the death penalty, that authorizes or restricts the granting of probation or suspending the execution or imposition of sentence, or expressly provides for imprisonment in the state prison for life. In any case in which the amount of preimprisonment credit under Section 2900.5 or any other provision of law is equal to or exceeds any sentence imposed pursuant to this chapter, the entire sentence shall be deemed to have been served and the defendant shall not be actually delivered to the custody of the Director of Corrections. The court shall advise the defendant that he or she shall serve a period of parole and order the defendant to report to the parole office closest to the defendant's last legal residence, unless the in-custody credits equal the total sentence, including both confinement time and the period of parole. The sentence shall be deemed a separate prior prison term under Section 667.5, and a copy of the judgment and other necessary documentation shall be forwarded to the Director of Corrections.

(b) When a judgment of imprisonment is to be imposed and the statute specifies three possible terms, the court shall order imposition of the middle term, unless there are circumstances in aggravation or mitigation of the crime. At least four days prior to the time set for imposition of judgment, either party or the victim, or the family of the victim if the victim is deceased, may submit a statement in

aggravation or mitigation to dispute facts in the record or the probation officer's report, or to present additional facts. In determining whether there are circumstances that justify imposition of the upper or lower term, the court may consider the record in the case, the probation officer's report, other reports including reports received pursuant to Section 1203.03 and statements in aggravation or mitigation submitted by the prosecution, the defendant, or the victim, or the family of the victim if the victim is deceased, and any further evidence introduced at the sentencing hearing. The court shall set forth on the record the facts and reasons for imposing the upper or lower term. The court may not impose an upper term by using the fact of any enhancement upon which sentence is imposed under any provision of law. A term of imprisonment shall not be specified if imposition of sentence is suspended.

(c) The court shall state the reasons for its sentence choice on the record at the time of sentencing. The court shall also inform the defendant that as part of the sentence after expiration of the term he or she may be on parole for a period as provided in Section 3000.

(d) When a defendant subject to this section or subdivision (b) of Section 1168 has been sentenced to be imprisoned in the state prison and has been committed to the custody of the Director of Corrections, the court may, within 120 days of the date of commitment on its own motion, or at any time upon the recommendation of the Director of Corrections or the Board of Prison Terms, recall the sentence and commitment previously ordered and resentence the defendant in the same manner as if he or she had not previously been sentenced, provided the new sentence, if any, is no greater than the initial sentence. The resentence under this subdivision shall apply the sentencing rules of the Judicial Council so as to eliminate disparity of sentences and to promote uniformity of sentencing. Credit shall be given for time served.

(e) (1) Notwithstanding any other law and consistent with paragraph (1) of subdivision (a) of Section 1170, if the Director of Corrections or the Board of Prison Terms or both determine that a prisoner satisfies the criteria set forth in paragraph (2), the director or the board may recommend to the court that the prisoner's sentence be recalled.

(2) The court shall have the discretion to resentence or recall if the court finds both of the following:

(A) The prisoner is terminally ill with an incurable condition caused by an illness or disease that would produce death within six months, as determined by a physician employed by the department.

(B) The conditions under which the prisoner would be released or receive treatment do not pose a threat to public safety.

The Board of Prison Terms shall make findings pursuant to this subdivision before making a recommendation for resentence or

recall to the court. This subdivision does not apply to a prisoner sentenced to death or a term of life without the possibility of parole.

(3) Within 10 days of receipt of a positive recommendation by the director or the board, the court shall hold a hearing to consider whether the prisoner's sentence should be recalled.

(4) The prisoner or his or her family member or designee may request consideration for recall and resentencing by contacting the chief medical officer at the prison or the Director of Corrections. Upon receipt of the request, if the director determines that the prisoner satisfies the criteria set forth in paragraph (2), the director or board may recommend to the court that the prisoner's sentence be recalled. The director shall submit a recommendation for release within 30 days in the case of inmates sentenced to determinate terms and, in the case of inmates sentenced to indeterminate terms, the director may make a recommendation to the Board of Prison Terms with respect to the inmates who have applied under this section. The board shall consider this information and make an independent judgment pursuant to paragraph (2) and make findings related thereto before rejecting the request or making a recommendation to the court. This action shall be taken at the next lawfully noticed board meeting.

(5) Any recommendation for recall submitted to the court by the Director of Corrections or the Board of Prison Terms shall include one or more medical evaluations, a postrelease plan, and findings pursuant to paragraph (2).

(6) If possible, the matter shall be heard before the same judge of the court who sentenced the prisoner.

(f) Any sentence imposed under this article shall be subject to the provisions of Sections 3000 and 3057 and any other applicable provisions of law.

(g) A sentence to state prison for a determinate term for which only one term is specified, is a sentence to state prison under this section.

SEC. 2. Section 1170.1 of the Penal Code is amended to read:

1170.1. (a) Except as provided in subdivisions (b) and (c), and subject to Section 654, when any person is convicted of two or more felonies, whether in the same proceeding or court or in different proceedings or courts, and whether by judgment rendered by the same or by a different court, and a consecutive term of imprisonment is imposed under Sections 669 and 1170, the aggregate term of imprisonment for all these convictions shall be the sum of the principal term, the subordinate term, and any additional term imposed for applicable enhancements for prior convictions, prior prison terms, and Section 12022.1. The principal term shall consist of the greatest term of imprisonment imposed by the court for any of the crimes, including any term imposed for applicable specific enhancements. The subordinate term for each consecutive offense which is not a "violent felony," as defined in subdivision (c) of Section

667.5, shall consist of one-third of the middle term of imprisonment prescribed for each other felony conviction for an offense that is not a violent felony for which a consecutive term of imprisonment is imposed, and shall exclude any specific enhancements. The subordinate term for each consecutive offense which is a "violent felony," as defined in any paragraph of subdivision (c) of Section 667.5, shall consist of one-third of the middle term of imprisonment prescribed for each other felony conviction for an offense that is a violent felony for which a consecutive term of imprisonment is imposed, and shall include one-third of the term imposed for any specific enhancements applicable to those subordinate offenses.

(b) When a consecutive term of imprisonment is imposed under Sections 669 and 1170 for two or more convictions for kidnapping, as defined in Section 207 or 208, involving separate victims, the aggregate term shall be calculated as provided in subdivision (a), except that the subordinate term for each subordinate kidnapping conviction shall consist of the full middle term for each kidnapping conviction for which a consecutive term of imprisonment is imposed and shall include the full term imposed for specific enhancements applicable to those subordinate offenses.

(c) In the case of any person convicted of one or more felonies committed while the person is confined in a state prison or is subject to reimprisonment for escape from custody and the law either requires the terms to be served consecutively or the court imposes consecutive terms, the term of imprisonment for all the convictions that the person is required to serve consecutively shall commence from the time the person would otherwise have been released from prison. If the new offenses are consecutive with each other, the principal and subordinate terms shall be calculated as provided in subdivision (a). This subdivision shall be applicable in cases of convictions of more than one offense in different proceedings, and convictions of more than one offense in the same or different proceedings.

(d) When the court imposes a prison sentence for a felony pursuant to Section 1170, the court shall also impose the additional terms provided for any applicable enhancements. The court shall also impose any other additional term that the court determines in its discretion or as required by law shall run consecutive to the term imposed under Section 1170. In considering the imposition of the additional term, the court shall apply the sentencing rules of the Judicial Council.

(e) All enhancements shall be alleged in the accusatory pleading and either admitted by the defendant in open court or found to be true by the trier of fact.

(f) When two or more enhancements may be imposed for being armed with or using a dangerous or deadly weapon or a firearm in the commission of a single offense, only the greatest of those enhancements shall be imposed for that offense. This subdivision

shall not limit the imposition of any other enhancements applicable to that offense, including an enhancement for the infliction of great bodily injury.

(g) When two or more enhancements may be imposed for the infliction of great bodily injury in the commission of a single offense, only the greatest of those enhancements shall be imposed for that offense. This subdivision shall not limit the imposition of any other enhancements applicable to that offense, including an enhancement for being armed with or using a dangerous or deadly weapon or a firearm.

(h) For any violation of paragraph (2), (3), or (6) of subdivision (a) of Section 261, paragraph (1) or (4) of subdivision (a) of Section 262, Section 264.1, subdivision (b) of Section 288, subdivision (a) of Section 289, or sodomy or oral copulation by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person as provided in Section 286 or 288a, the number of enhancements that may be imposed shall not be limited, regardless of whether the enhancements are pursuant to this section, Section 667.6, or some other section of law. Each of the enhancements shall be a full and separately served enhancement and shall not be merged with any term or with any other enhancement.

SEC. 2.5. Section 1170.1 of the Penal Code is amended to read:

1170.1. (a) Except as provided in subdivisions (b) and (c), and subject to Section 654, when any person is convicted of two or more felonies, whether in the same proceeding or court or in different proceedings or courts, and whether by judgment rendered by the same or by a different court, and a consecutive term of imprisonment is imposed under Sections 669 and 1170, the aggregate term of imprisonment for all these convictions shall be the sum of the principal term, the subordinate term, and any additional term imposed for applicable enhancements for prior convictions, prior prison terms, and Section 12022.1. The principal term shall consist of the greatest term of imprisonment imposed by the court for any of the crimes, including any term imposed for applicable specific enhancements. The subordinate term for each consecutive offense which is not a "violent felony," as defined in subdivision (c) of Section 667.5, shall consist of one-third of the middle term of imprisonment prescribed for each other felony conviction for an offense that is not a violent felony for which a consecutive term of imprisonment is imposed, and shall exclude any specific enhancements. The subordinate term for each consecutive offense which is a "violent felony," as defined in any paragraph of subdivision (c) of Section 667.5, shall consist of one-third of the middle term of imprisonment prescribed for each other felony conviction for an offense that is a violent felony for which a consecutive term of imprisonment is imposed, and shall include one-third of the term imposed for any specific enhancements applicable to those subordinate offenses.

(b) When a consecutive term of imprisonment is imposed under Sections 669 and 1170 for two or more convictions for kidnapping, as defined in Section 207, involving separate victims, the aggregate term shall be calculated as provided in subdivision (a), except that the subordinate term for each subordinate kidnapping conviction shall consist of the full middle term for each kidnapping conviction for which a consecutive term of imprisonment is imposed and shall include the full term imposed for specific enhancements applicable to those subordinate offenses.

(c) In the case of any person convicted of one or more felonies committed while the person is confined in a state prison or is subject to reimprisonment for escape from custody and the law either requires the terms to be served consecutively or the court imposes consecutive terms, the term of imprisonment for all the convictions that the person is required to serve consecutively shall commence from the time the person would otherwise have been released from prison. If the new offenses are consecutive with each other, the principal and subordinate terms shall be calculated as provided in subdivision (a). This subdivision shall be applicable in cases of convictions of more than one offense in different proceedings, and convictions of more than one offense in the same or different proceedings.

(d) When the court imposes a prison sentence for a felony pursuant to Section 1170, the court shall also impose the additional terms provided for any applicable enhancements. The court shall also impose any other additional term that the court determines in its discretion or as required by law shall run consecutive to the term imposed under Section 1170. In considering the imposition of the additional term, the court shall apply the sentencing rules of the Judicial Council.

(e) All enhancements shall be alleged in the accusatory pleading and either admitted by the defendant in open court or found to be true by the trier of fact.

(f) When two or more enhancements may be imposed for being armed with or using a dangerous or deadly weapon or a firearm in the commission of a single offense, only the greatest of those enhancements shall be imposed for that offense. This subdivision shall not limit the imposition of any other enhancements applicable to that offense, including an enhancement for the infliction of great bodily injury.

(g) When two or more enhancements may be imposed for the infliction of great bodily injury in the commission of a single offense, only the greatest of those enhancements shall be imposed for that offense. This subdivision shall not limit the imposition of any other enhancements applicable to that offense, including an enhancement for being armed with or using a dangerous or deadly weapon or a firearm.

(h) For any violation of paragraph (2), (3), or (6) of subdivision (a) of Section 261, paragraph (1) or (4) of subdivision (a) of Section 262, Section 264.1, subdivision (b) of Section 288, subdivision (a) of Section 289, or sodomy or oral copulation by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person as provided in Section 286 or 288a, the number of enhancements that may be imposed shall not be limited, regardless of whether the enhancements are pursuant to this section, Section 667.6, or some other section of law. Each of the enhancements shall be a full and separately served enhancement and shall not be merged with any term or with any other enhancement.

SEC. 3. Section 1170.13 of the Penal Code is amended to read:

1170.13. Notwithstanding subdivision (a) of Section 1170.1 which provides for the imposition of a subordinate term for a consecutive offense of one-third of the middle term of imprisonment, if a person is convicted pursuant to subdivision (b) of Section 139, the subordinate term for each consecutive offense shall consist of the full middle term.

SEC. 4. Section 1170.15 of the Penal Code is amended to read:

1170.15. Notwithstanding subdivision (a) of Section 1170.1 which provides for the imposition of a subordinate term for a consecutive offense of one-third of the middle term of imprisonment, if a person is convicted of a felony, and of an additional felony that is a violation of Section 136.1 or 137 and that was committed against the victim of, or a witness or potential witness with respect to, or a person who was about to give material information pertaining to, the first felony, or of a felony violation of Section 653f that was committed to dissuade a witness or potential witness to the first felony, the subordinate term for each consecutive offense that is a felony described in this section shall consist of the full middle term of imprisonment for the felony for which a consecutive term of imprisonment is imposed, and shall include the full term prescribed for any enhancements imposed for being armed with or using a dangerous or deadly weapon or a firearm, or for inflicting great bodily injury.

SEC. 5. Section 1170.95 of the Penal Code is amended to read:

1170.95. When a subordinate consecutive term of imprisonment is imposed pursuant to Sections 669 and 1170 that involves one or more convictions for robbery where it is charged and found that in each of those robberies that the defendant personally used a deadly or dangerous weapon in the commission of that robbery, as provided in subdivision (b) of Section 12022, and each of those robberies is not a violent felony, as defined in subdivision (c) of Section 667.5, the aggregate term shall be calculated as provided in subdivision (a) of Section 1170.1, except that the subordinate term for each subordinate robbery conviction shall consist of one-third of the middle term of imprisonment and one-third of the enhancement provided in subdivision (b) of Section 12022.

SEC. 6. Section 1.5 of this bill incorporates amendments to Section 1170 of the Penal Code proposed by both this bill and SB 295. 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 1170 of the Penal Code, and (3) this bill is enacted after SB 295, in which case Section 1170 of the Penal Code as amended by SB 295, shall remain operative only until the operative date of this bill, at which time Section 1.5 of this bill shall become operative, and Section 1 of this bill shall not become operative.

SEC. 7. Section 2.5 of this bill incorporates amendments to Section 1170.1 of the Penal Code proposed by both this bill and AB 1290. 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 1170.1 of the Penal Code, and (3) this bill is enacted after AB 1290, in which case Section 2 of this bill shall not become operative.

CHAPTER 927

An act to amend Section 290 of the Penal Code, relating to sex offenders.

[Approved by Governor September 28, 1998. Filed with Secretary of State September 28, 1998.]

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

SECTION 1. 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 is hereafter 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 is hereafter 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, which demonstrate 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 all 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.

(C) Any person who is preregistered pursuant to this subdivision is required to be preregistered only once.

(2) 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.

(3) 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 subparagraph (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 must 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 on 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 elsewhere 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 also meets one 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 any of the following: 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 or California State University, or 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.

(4) Notwithstanding any other provision of law, any person described in paragraph (2) of subdivision (p) who receives information from a designated law enforcement entity pursuant to paragraph (3) of subdivision (n) may disclose that information in the manner and to the extent authorized by the law enforcement entity.

(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) (1) Any law enforcement agency and employees of any law enforcement agency 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 of California, every district attorney, and every state or local agency expressly authorized by statute to investigate or prosecute law violators.

(2) Any public or private educational institution, day care facility, or any child care custodian described in Section 11165.7, or any employee of a public or private educational institution or day care facility, who in good faith disseminates information as authorized pursuant to paragraph (4) of subdivision (n) that is provided by a law enforcement agency shall be immune from civil liability.

(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.

CHAPTER 928

An act to amend Sections 290, 679.02, and 1203.1 of the Penal Code, relating to sex offenders.

[Approved by Governor September 28, 1998. Filed with Secretary of State September 28, 1998.]

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

SECTION 1. 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 is hereafter 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 is hereafter 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, which demonstrate 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.

(C) Any person who is preregistered pursuant to this subdivision is required to be preregistered only once.

(2) 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.

(E) Copies of adequate proof of residence, which shall be limited to a California driver's license, California identification card, recent rent or utility receipt, printed personalized checks or other recent banking documents showing that person's name and address, or any other information that the registering official believes is reliable. If the person has no residence and no reasonable expectation of obtaining a residence in the foreseeable future, the person shall so advise the registering official and shall sign a statement provided by

the registering official stating that fact. Upon presentation of proof of residence to the registering official or a signed statement that the person has no residence, the person shall be allowed to register. If the person claims that he or she has a residence but does not have any proof of residence, he or she shall be allowed to register but shall furnish proof of residence within 30 days of the day he or she is allowed to register. If a registrant fails to furnish proof of residence within this 30-day period, he or she shall be guilty of a misdemeanor.

(3) 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 5 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 must 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 on 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 elsewhere 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 also meets one 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 any of the following: 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 or California State University, or 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. 2. Section 679.02 of the Penal Code is amended to read:

679.02. (a) The following are hereby established as the statutory rights of victims and witnesses of crimes:

(1) To be notified as soon as feasible that a court proceeding to which he or she has been subpoenaed as a witness will not proceed as scheduled, provided the prosecuting attorney determines that the witness' attendance is not required.

(2) Upon request of the victim or a witness, to be informed by the prosecuting attorney of the final disposition of the case, as provided by Section 11116.10.

(3) For the victim, the victim's parents or guardian if the victim is a minor, or the next of kin of the victim if the victim has died, to be notified of all sentencing proceedings, and of the right to appear, to reasonably express his or her views, have those views preserved by audio or video means as provided in Section 1191.16, and to have the court consider his or her statements, as provided by Sections 1191.1 and 1191.15.

(4) For the victim, the victim's parents or guardian if the victim is a minor, or the next of kin of the victim if the victim has died, to be notified of all juvenile disposition hearings in which the alleged act would have been a felony if committed by an adult, and of the right to attend and to express his or her views, as provided by Section 656.2 of the Welfare and Institutions Code.

(5) Upon request by the victim or the next of kin of the victim if the victim has died, to be notified of any parole eligibility hearing and of the right to appear, either personally as provided by Section 3043 of this code, or by other means as provided by Sections 3043.2 and 3043.25 of this code, to reasonably express his or her views, and to have his or her statements considered, as provided by Section 3043 of this code and by Section 1767 of the Welfare and Institutions Code.

(6) Upon request by the victim or the next of kin of the victim if the crime was a homicide, to be notified of an inmate's placement in a reentry or work furlough program, or notified of the inmate's escape as provided by Section 11155.

(7) To be notified that he or she may be entitled to witness fees and mileage, as provided by Section 1329.1.

(8) For the victim, to be provided with information concerning the victim's right to civil recovery and the opportunity to be compensated from the Restitution Fund pursuant to Chapter 5 (commencing with Section 13959) of Part 4 of Division 3 of Title 2 of the Government Code and Section 1191.2 of this code.

(9) To the expeditious return of his or her property which has allegedly been stolen or embezzled, when it is no longer needed as evidence, as provided by Chapter 12 (commencing with Section 1407) and Chapter 13 (commencing with Section 1417) of Title 10 of Part 2.

(10) To an expeditious disposition of the criminal action.

(11) To be notified, if applicable, in accordance with Sections 679.03 and 3058.8 if the defendant is to be placed on parole.

(12) To be notified by the district attorney's office where the case involves a violent felony, as defined in subdivision (c) of Section 667.5, or in the event of a homicide, the victim's next of kin, of a pending pretrial disposition before a change of plea is entered before a judge.

(A) A victim of any felony may request to be notified, by the district attorney's office, of a pretrial disposition.

(B) If it is not possible to notify the victim of the pretrial disposition before the change of plea is entered, the district attorney's office or the county probation department shall notify the victim as soon as possible.

(C) The victim may be notified by any reasonable means available.

Nothing in this paragraph is intended to affect the right of the people and the defendant to an expeditious disposition as provided in Section 1050.

(13) For the victim, to be notified by the district attorney's office of the right to request, upon a form provided by the district attorney's office, and receive a notice pursuant to paragraph (14), if the defendant is convicted of any of the following offenses:

(A) Assault with intent to commit rape, sodomy, oral copulation, or any violation of Section 264.1, 288, or 289, in violation of Section 220.

(B) A violation of Section 207 or 209 committed with the intent to commit a violation of Section 261, 262, 286, 288, 288a, or 289.

(C) Rape, in violation of Section 261.

(D) Oral copulation, in violation of Section 288a.

(E) Sodomy, in violation of Section 286.

(F) A violation of Section 288.

(G) A violation of Section 289.

(14) When a victim has requested notification pursuant to paragraph (13), the sheriff shall inform the victim that the person who was convicted of the offense has been ordered to be placed on probation, and give the victim notice of the proposed date upon which the person will be released from the custody of the sheriff.

(b) The rights set forth in subdivision (a) shall be set forth in the information and educational materials prepared pursuant to Section 13897.1. The information and educational materials shall be distributed to local law enforcement agencies and local victims' programs by the Victims' Legal Resource Center established pursuant to Chapter 11 (commencing with Section 13897) of Title 6 of Part 4.

(c) Local law enforcement agencies shall make available copies of the materials described in subdivision (b) to victims and witnesses.

(d) Nothing in this section is intended to affect the rights and services provided to victims and witnesses by the local assistance centers for victims and witnesses.

SEC. 3. Section 1203.1 of the Penal Code is amended to read:

1203.1. (a) The court, or judge thereof, in the order granting probation, may suspend the imposing or the execution of the sentence and may direct that the suspension may continue for a period of time not exceeding the maximum possible term of the sentence, except as hereinafter set forth, and upon those terms and conditions as it shall determine. The court, or judge thereof, in the order granting probation and as a condition thereof, may imprison the defendant in a county jail for a period not exceeding the maximum time fixed by law in the case.

However, where the maximum possible term of the sentence is five years or less, then the period of suspension of imposition or execution of sentence may, in the discretion of the court, continue for not over five years. The following shall apply to this subdivision:

(1) The court may fine the defendant in a sum not to exceed the maximum fine provided by law in the case.

(2) The court may, in connection with granting probation, impose either imprisonment in a county jail or a fine, both, or neither.

(3) The court shall provide for restitution in proper cases.

(4) The court may require bonds for the faithful observance and performance of any or all of the conditions of probation.

(b) The court shall consider whether the defendant as a condition of probation shall make restitution to the victim or the Restitution Fund. Any restitution payment received by a probation department in the form of cash or money order shall be forwarded to the victim within 30 days from the date the payment is received by the department. Any restitution payment received by a probation department in the form of a check or draft shall be forwarded to the victim within 45 days from the date the payment is received by the department, provided, that payment need not be forwarded to a victim until 180 days from the date the first payment is received, if the restitution payments for that victim received by the probation department total less than fifty dollars ($50). In cases where the court has ordered the defendant to pay restitution to multiple victims and where the administrative cost of disbursing restitution payments to multiple victims involves a significant cost, any restitution payment received by a probation department shall be forwarded to multiple victims when it is cost-effective to do so, but in no event shall restitution disbursements be delayed beyond 180 days from the date the payment is received by the probation department.

(c) In counties or cities and counties where road camps, farms, or other public work is available the court may place the probationer in the road camp, farm, or other public work instead of in jail. In this case, Section 25359 of the Government Code shall apply to probation and the court shall have the same power to require adult probationers to work, as prisoners confined in the county jail are required to work, at public work. Each county board of supervisors may fix the scale of compensation of the adult probationers in that county.

(d) In all cases of probation the court may require as a condition of probation that the probationer go to work and earn money for the support of his or her dependents or to pay any fine imposed or reparation condition, to keep an account of his or her earnings, to report them to the probation officer and apply those earnings as directed by the court.

(e) The court shall also consider whether the defendant as a condition of probation shall make restitution to a public agency for the costs of an emergency response pursuant to Article 8 (commencing with Section 53150) of Chapter 1 of Part 1 of Division 2 of the Government Code.

(f) In all cases in which, as a condition of probation, a judge of the superior court sitting by authority of law elsewhere than at the county seat requires a convicted person to serve his or her sentence at intermittent periods the sentence may be served on the order of the judge at the city jail nearest to the place at which the court is

sitting, and the cost of his or her maintenance shall be a county charge.

(g) (1) The court and prosecuting attorney shall consider whether any defendant who has been convicted of a nonviolent or nonserious offense and ordered to participate in community service as a condition of probation shall be required to engage in the removal of graffiti in the performance of the community service. For the purpose of this subdivision, a nonserious offense shall not include the following:

(A) Offenses in violation of the Dangerous Weapons' Control Law (Chapter 1 (commencing with Section 12000) of Title 2 of Part 4).

(B) Offenses involving the use of a dangerous or deadly weapon, including all violations of Section 417.

(C) Offenses involving the use or attempted use of violence against the person of another or involving injury to a victim.

(D) Offenses involving annoying or molesting children.

(2) Notwithstanding subparagraph (A) of paragraph (1), any person who violates Section 12101 shall be ordered to perform not less than 100 hours and not more than 500 hours of community service as a condition of probation.

(3) The court and the prosecuting attorney need not consider a defendant pursuant to paragraph (1) if the following circumstances exist:

(A) The defendant was convicted of any offense set forth in subdivision (c) of Section 667.5 or subdivision (c) of Section 1192.7.

(B) The judge believes that the public safety may be endangered if the person is ordered to do community service or the judge believes that the facts or circumstances or facts and circumstances call for imposition of a more substantial penalty.

(h) The probation officer or his or her designated representative shall consider whether any defendant who has been convicted of a nonviolent and nonserious offense and ordered to participate in community service as a condition of probation shall be required to engage in the performance of house repairs or yard services for senior citizens and the performance of repairs to senior centers through contact with local senior service organizations in the performance of the community service.

(i) (1) Upon conviction of any offense involving child abuse or neglect, the court may require, in addition to any or all of the above-mentioned terms of imprisonment, fine, and other reasonable conditions, that the defendant shall participate in counseling or education programs, or both, including, but not limited to, parent education or parenting programs operated by community colleges, school districts, other public agencies, or private agencies.

(2) Upon conviction of any sex offense subjecting the defendant to the registration requirements of Section 290, the court may order as a condition of probation, at the request of the victim or in the court's discretion, that the defendant stay away from the victim and

the victim's residence or place of employment, and that the defendant have no contact with the victim in person, by telephone or electronic means, or by mail.

(j) The court may impose and require any or all of the above-mentioned terms of imprisonment, fine, and conditions, and other reasonable conditions, as it may determine are fitting and proper to the end that justice may be done, that amends may be made to society for the breach of the law, for any injury done to any person resulting from that breach, and generally and specifically for the reformation and rehabilitation of the probationer, and that should the probationer violate any of the terms or conditions imposed by the court in the matter, it shall have authority to modify and change any and all the terms and conditions and to reimprison the probationer in the county jail within the limitations of the penalty of the public offense involved. Upon the defendant being released from the county jail under the terms of probation as originally granted or any modification subsequently made, and in all cases where confinement in a county jail has not been a condition of the grant of probation, the court shall place the defendant or probationer in and under the charge of the probation officer of the court, for the period or term fixed for probation. However, upon the payment of any fine imposed and the fulfillment of all conditions of probation, probation shall cease at the end of the term of probation, or sooner, in the event of modification. In counties and cities and counties in which there are facilities for taking fingerprints, those of each probationer shall be taken and a record of them kept and preserved.

(k) Notwithstanding any other provisions of law to the contrary, except as provided in Section 13967, as operative on or before September 28, 1994, of the Government Code and Section 13967.5 of the Government Code and Sections 1202.4, 1463.16, paragraph (1) of subdivision (a) of Section 1463.18, and Section 1464, and Section 1203.04, as operative on or before August 2, 1995, all fines collected by a county probation officer in any of the courts of this state, as a condition of the granting of probation or as a part of the terms of probation, shall be paid into the county treasury and placed in the general fund for the use and benefit of the county.

(*l*) If the court orders restitution to be made to the victim, the board of supervisors may add a fee to cover the actual administrative cost of collecting restitution but not to exceed 10 percent of the total amount ordered to be paid. The fees shall be paid into the general fund of the county treasury for the use and benefit of the county.

SEC. 3.5. Section 1203.1 of the Penal Code is amended to read:

1203.1. (a) The court, or judge thereof, in the order granting probation, may suspend the imposing or the execution of the sentence and may direct that the suspension may continue for a period of time not exceeding the maximum possible term of the sentence, except as hereinafter set forth, and upon those terms and conditions as it shall determine. The court, or judge thereof, in the

order granting probation and as a condition thereof, may imprison the defendant in a county jail for a period not exceeding the maximum time fixed by law in the case.

However, where the maximum possible term of the sentence is five years or less, then the period of suspension of imposition or execution of sentence may, in the discretion of the court, continue for not over five years. The following shall apply to this subdivision:

(1) The court may fine the defendant in a sum not to exceed the maximum fine provided by law in the case.

(2) The court may, in connection with granting probation, impose either imprisonment in a county jail or a fine, both, or neither.

(3) The court shall provide for restitution in proper cases. The restitution order shall be fully enforceable as a civil judgment forthwith and in accordance with Section 1202.4 of the Penal Code.

(4) The court may require bonds for the faithful observance and performance of any or all of the conditions of probation.

(b) The court shall consider whether the defendant as a condition of probation shall make restitution to the victim or the Restitution Fund. Any restitution payment received by a probation department in the form of cash or money order shall be forwarded to the victim within 30 days from the date the payment is received by the department. Any restitution payment received by a probation department in the form of a check or draft shall be forwarded to the victim within 45 days from the date the payment is received by the department, provided, that payment need not be forwarded to a victim until 180 days from the date the first payment is received, if the restitution payments for that victim received by the probation department total less than fifty dollars ($50). In cases where the court has ordered the defendant to pay restitution to multiple victims and where the administrative cost of disbursing restitution payments to multiple victims involves a significant cost, any restitution payment received by a probation department shall be forwarded to multiple victims when it is cost effective to do so, but in no event shall restitution disbursements be delayed beyond 180 days from the date the payment is received by the probation department.

(c) In counties or cities and counties where road camps, farms, or other public work is available the court may place the probationer in the road camp, farm, or other public work instead of in jail. In this case, Section 25359 of the Government Code shall apply to probation and the court shall have the same power to require adult probationers to work, as prisoners confined in the county jail are required to work, at public work. Each county board of supervisors may fix the scale of compensation of the adult probationers in that county.

(d) In all cases of probation the court may require as a condition of probation that the probationer go to work and earn money for the support of his or her dependents or to pay any fine imposed or reparation condition, to keep an account of his or her earnings, to

report them to the probation officer and apply those earnings as directed by the court.

(e) The court shall also consider whether the defendant as a condition of probation shall make restitution to a public agency for the costs of an emergency response pursuant to Article 8 (commencing with Section 53150) of Chapter 1 of Part 1 of Division 2 of the Government Code.

(f) In all cases in which, as a condition of probation, a judge of the superior court sitting by authority of law elsewhere than at the county seat requires a convicted person to serve his or her sentence at intermittent periods the sentence may be served on the order of the judge at the city jail nearest to the place at which the court is sitting, and the cost of his or her maintenance shall be a county charge.

(g) (1) The court and prosecuting attorney shall consider whether any defendant who has been convicted of a nonviolent or nonserious offense and ordered to participate in community service as a condition of probation shall be required to engage in the removal of graffiti in the performance of the community service. For the purpose of this subdivision, a nonserious offense shall not include the following:

(A) Offenses in violation of the Dangerous Weapons' Control Law (Chapter 1 (commencing with Section 12000) of Title 2 of Part 4).

(B) Offenses involving the use of a dangerous or deadly weapon, including all violations of Section 417.

(C) Offenses involving the use or attempted use of violence against the person of another or involving injury to a victim.

(D) Offenses involving annoying or molesting children.

(2) Notwithstanding subparagraph (A) of paragraph (1), any person who violates Section 12101 shall be ordered to perform not less than 100 hours and not more than 500 hours of community service as a condition of probation.

(3) The court and the prosecuting attorney need not consider a defendant pursuant to paragraph (1) if the following circumstances exist:

(A) The defendant was convicted of any offense set forth in subdivision (c) of Section 667.5 or subdivision (c) of Section 1192.7.

(B) The judge believes that the public safety may be endangered if the person is ordered to do community service or the judge believes that the facts or circumstances or facts and circumstances call for imposition of a more substantial penalty.

(h) The probation officer or his or her designated representative shall consider whether any defendant who has been convicted of a nonviolent and nonserious offense and ordered to participate in community service as a condition of probation shall be required to engage in the performance of house repairs or yard services for senior citizens and the performance of repairs to senior centers through

contact with local senior service organizations in the performance of the community service.

(i) (1) Upon conviction of any offense involving child abuse or neglect, the court may require, in addition to any or all of the above-mentioned terms of imprisonment, fine, and other reasonable conditions, that the defendant shall participate in counseling or education programs, or both, including, but not limited to, parent education or parenting programs operated by community colleges, school districts, other public agencies, or private agencies.

(2) Upon conviction of any sex offense subjecting the defendant to the registration requirements of Section 290, the court may order as a condition of probation, at the request of the victim or in the court's discretion, that the defendant stay away from the victim and the victim's residence or place of employment, and that the defendant have no contact with the victim in person, by telephone or electronic means, or by mail.

(j) The court may impose and require any or all of the above-mentioned terms of imprisonment, fine, and conditions, and other reasonable conditions, as it may determine are fitting and proper to the end that justice may be done, that amends may be made to society for the breach of the law, for any injury done to any person resulting from that breach, and generally and specifically for the reformation and rehabilitation of the probationer, and that should the probationer violate any of the terms or conditions imposed by the court in the matter, it shall have authority to modify and change any and all the terms and conditions and to reimprison the probationer in the county jail within the limitations of the penalty of the public offense involved. Upon the defendant being released from the county jail under the terms of probation as originally granted or any modification subsequently made, and in all cases where confinement in a county jail has not been a condition of the grant of probation, the court shall place the defendant or probationer in and under the charge of the probation officer of the court, for the period or term fixed for probation. However, upon the payment of any fine imposed and the fulfillment of all conditions of probation, probation shall cease at the end of the term of probation, or sooner, in the event of modification. In counties and cities and counties in which there are facilities for taking fingerprints, those of each probationer shall be taken and a record of them kept and preserved.

(k) Notwithstanding any other provisions of law to the contrary, except as provided in Section 13967, as operative on or before September 28, 1994, of the Government Code and Section 13967.5 of the Government Code and Sections 1202.4, 1463.16, paragraph (1) of subdivision (a) of Section 1463.18, and Section 1464, and Section 1203.04, as operative on or before August 2, 1995, all fines collected by a county probation officer in any of the courts of this state, as a condition of the granting of probation or as a part of the terms of

probation, shall be paid into the county treasury and placed in the general fund for the use and benefit of the county.

(*l*) If the court orders restitution to be made to the victim, the board of supervisors may add a fee to cover the actual administrative cost of collecting restitution but not to exceed 10 percent of the total amount ordered to be paid. The fees shall be paid into the general fund of the county treasury for the use and benefit of the county.

SEC. 4. Section 3.5 of this bill incorporates amendments to Section 1203.1 of the Penal Code proposed by both this bill and SB 1608. 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 1203.1 of the Penal Code, and (3) this bill is enacted after SB 1608, in which case Section 3 of this bill shall not become operative.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution 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 929

An act to amend Sections 290 and 290.4 of the Penal Code, relating to sex offenders.

[Approved by Governor September 28, 1998. Filed with Secretary of State September 28, 1998.]

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

SECTION 1. 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, or changing his or her residence or location within, any city, county, or city and county, or campus 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 no less than once 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. The registering agency shall submit registrations, including annual updates or changes of address, directly into the Department of Justice Violent Crime Information Network (VCIN).

(2) The following persons shall be required to register pursuant to paragraph (1):

(A) Any person who, since July 1, 1944, has been or is hereafter 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 is hereafter 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 or sentencing 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 or sentencing 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, which demonstrate 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, granted conditional release without supervised 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.

(C) Any person who is preregistered pursuant to this subdivision is required to be preregistered only once.

(2) 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.

(3) 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 or location, whether within the jurisdiction in which he or she is currently registered or to a new jurisdiction inside or outside the state, 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 or location. The law enforcement agency or agencies shall, within three days after receipt of this information, forward a copy of the change of address or location 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 or location.

(2) If the person's new address is in a Department of the Youth Authority facility or a state prison or state mental institution, an official of the place of incarceration, placement, or commitment shall, within 90 days of receipt of the person, forward the registrant's change of address information to the Department of Justice. The agency need not provide a physical address for the registrant but shall indicate that he or she is serving a period of incarceration or commitment in a facility under the agency's jurisdiction. This paragraph shall apply to persons received in a Department of the Youth Authority facility or a state prison or state mental institution on or after January 1, 1999. The Department of Justice shall forward the change of address information to the agency with which the person last registered.

(3) 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) Except as otherwise provided in paragraph (5), and 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 must 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 on 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 elsewhere 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 also meets one 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 any of the following: 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 or California State University, or 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) Any law enforcement agency and employees of any law enforcement agency 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 of California, every district attorney, and every state or local 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. 1.1. 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, or changing his or her residence or location within, any city, county, or city and county, or campus 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 no less than once 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. The registering agency shall submit registrations, including annual updates or changes of address, directly into the Department of Justice Violent Crime Information Network (VCIN).

(2) The following persons shall be required to register pursuant to paragraph (1):

(A) Any person who, since July 1, 1944, has been or is hereafter 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 is hereafter 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 or sentencing 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 or sentencing 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,

which demonstrate 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, granted conditional release without supervised 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 all 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.

(C) Any person who is preregistered pursuant to this subdivision is required to be preregistered only once.

(2) 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.

(E) Copies of adequate proof of residence, which shall be limited to a California driver's license, California identification card, recent rent or utility receipt, printed personalized checks or other recent banking documents showing that person's name and address, or any other information that the registering official believes is reliable. If the person has no residence and no reasonable expectation of obtaining a residence in the foreseeable future, the person shall so advise the registering official and shall sign a statement provided by the registering official stating that fact. Upon presentation of proof of residence to the registering official or a signed statement that the person has no residence, the person shall be allowed to register. If the person claims that he or she has a residence but does not have any proof of residence, he or she shall be allowed to register but shall furnish proof of residence within 30 days of the day he or she is allowed to register. If a registrant fails to furnish proof of residence within this 30-day period, he or she shall be guilty of a misdemeanor.

(3) 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 or location, whether within the jurisdiction in which he or she is currently registered or to a new jurisdiction inside or outside the state, 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 or location. The law enforcement agency or agencies shall, within three days after receipt of this information, forward a copy of the change of address or location 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 or location.

(2) If the person's new address is in a Department of the Youth Authority facility or a state prison or state mental institution, an official of the place of incarceration, placement, or commitment shall, within 90 days of receipt of the person, forward the registrant's change of address information to the Department of Justice. The agency need not provide a physical address for the registrant but shall indicate that he or she is serving a period of incarceration or commitment in a facility under the agency's jurisdiction. This paragraph shall apply to persons received in a Department of the Youth Authority facility or a state prison or state mental institution on or after January 1, 1999. The Department of Justice shall forward the change of address information to the agency with which the person last registered.

(3) 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) Except as otherwise provided in paragraph (5), and 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 subparagraph (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 5 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 (4) 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 law enforcement agency may authorize persons and entities who receive the information pursuant to paragraph (1) to disclose information to additional persons only if the agency does the following:

(A) Determines that all conditions set forth in paragraph (1) have been satisfied regarding disclosure to the additional persons.

(B) Identifies the appropriate scope of further disclosure.

(3) Persons notified pursuant to paragraph (1) may disclose the information provided by the law enforcement agency in the manner and to the extent authorized by the law enforcement agency.

(4) 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 must 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.

(5) 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.

(6) 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.

(7) 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.

(8) 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.

(9) A law enforcement agency may continue to disclose information on 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 elsewhere 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 also meets one 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 any of the following: 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 or California State University, or 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.

(4) Notwithstanding any other provision of law, any person described in paragraph (2) of subdivision (p) who receives information from a designated law enforcement entity pursuant to paragraph (3) of subdivision (n) may disclose that information in the manner and to the extent authorized by the law enforcement entity.

(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) (1) Any law enforcement agency and employees of any law enforcement agency 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 of California, every district attorney, and every state or local agency expressly authorized by statute to investigate or prosecute law violators.

(2) Any public or private educational institution, day care facility, or any child care custodian described in Section 11165.7, or any employee of a public or private educational institution or day care facility which in good faith disseminates information as authorized pursuant to paragraph (3) of subdivision (m) or paragraph (4) of subdivision (n) that is provided by a law enforcement agency or an employee of a law enforcement agency shall be immune from civil liability.

(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. 1.2. 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, or changing his or her residence or location within, any city, county, or city and county, or campus 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, and place of employment, including the name and address of the employer, 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 no less than once every 90 days and place of employment, including the name and address of the employer, 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. The registering agency shall submit registrations, including annual updates or changes of address, directly into the Department of Justice Violent Crime Information Network (VCIN).

(2) The following persons shall be required to register pursuant to paragraph (1):

(A) Any person who, since July 1, 1944, has been or is hereafter 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 is hereafter 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 or sentencing 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 or sentencing 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, which demonstrate 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, granted conditional release without supervised 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 all of the following:

(A) A preregistration statement in writing, signed by the person, giving information that shall be required by the Department of Justice.

(B) The fingerprints and photograph of the person.

(C) Any person who is preregistered pursuant to this subdivision is required to be preregistered only once.

(2) 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 shall be required by the Department of Justice and giving the name and address of the person's employer, and the address of the person's place of employment if that is different from the employer's main address.

(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.

(E) Copies of adequate proof of residence, which shall be limited to a California driver's license, California identification card, recent rent or utility receipt, printed personalized checks or other recent banking documents showing that person's name and address, or any other information that the registering official believes is reliable. If the person has no residence and no reasonable expectation of obtaining a residence in the foreseeable future, the person shall so advise the registering official and shall sign a statement provided by the registering official stating that fact. Upon presentation of proof of residence to the registering official or a signed statement that the person has no residence, the person shall be allowed to register. If the person claims that he or she has a residence but does not have any proof of residence, he or she shall be allowed to register but shall furnish proof of residence within 30 days of the day he or she is allowed to register. If a registrant fails to furnish proof of residence within this 30-day period, he or she shall be guilty of a misdemeanor.

(3) 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 or location, whether within the jurisdiction in which he or she is currently registered or to a new jurisdiction inside or outside the state, 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 or location. The law enforcement agency or agencies shall, within three days after receipt of this information, forward a copy of the change of address or location 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 or location.

(2) If the person's new address is in a Department of the Youth Authority facility or a state prison or state mental institution, an official of the place of incarceration, placement, or commitment shall, within 90 days of receipt of the person, forward the registrant's change of address information to the Department of Justice. The agency need not provide a physical address for the registrant but shall indicate that he or she is serving a period of incarceration or commitment in a facility under the agency's jurisdiction. This paragraph shall apply to persons received in a Department of the Youth Authority facility or a state prison or state mental institution on or after January 1, 1999. The Department of Justice shall forward the change of address information to the agency with which the person last registered.

(3) 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) Except as otherwise provided in paragraph (5), and 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 subparagraph (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 5 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 (4) 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 law enforcement agency may authorize persons and entities who receive the information pursuant to paragraph (1) to disclose information to additional persons only if the agency does the following:

(A) Determines that all conditions set forth in paragraph (1) have been satisfied regarding disclosure to the additional persons.

(B) Identifies the appropriate scope of further disclosure.

(3) Persons notified pursuant to paragraph (1) may disclose the information provided by the law enforcement agency in the manner and to the extent authorized by the law enforcement agency.

(4) 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 residence address, which must 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.

(5) 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.

(6) 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.

(7) 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.

(8) 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.

(9) A law enforcement agency may continue to disclose information on 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 elsewhere 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 also meets one 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 any of the following: 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 or California State University, or 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 sex 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 residence and employment 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.

(4) Notwithstanding any other provision of law, any person described in paragraph (2) of subdivision (p) who receives information from a designated law enforcement entity pursuant to paragraph (3) of subdivision (n) may disclose that information in the manner and to the extent authorized by the law enforcement entity.

(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) (1) Any law enforcement agency and employees of any law enforcement agency 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 of California, every district attorney, and every state or local agency expressly authorized by statute to investigate or prosecute law violators.

(2) Any public or private educational institution, day care facility, or any child care custodian described in Section 11165.7, or any employee of a public or private educational institution or day care facility which in good faith disseminates information as authorized pursuant to paragraph (3) of subdivision (m) or paragraph (4) of subdivision (n) that is provided by a law enforcement agency or an employee of a law enforcement agency shall be immune from civil liability.

(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. 1.3. 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, or changing his or her residence or location within, any city, county, or city and county, or campus 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 no less than once 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. The registering agency shall submit registrations, including annual updates or changes of address, directly into the Department of Justice Violent Crime Information Network (VCIN).

(2) The following persons shall be required to register pursuant to paragraph (1):

(A) Any person who, since July 1, 1944, has been or is hereafter 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 is hereafter 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 or sentencing 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 or sentencing 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, which demonstrate 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, granted conditional release without supervised 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 all 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.

(C) Any person who is preregistered pursuant to this subdivision is required to be preregistered only once.

(2) 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.

(E) Copies of adequate proof of residence, which shall be limited to a California driver's license, California identification card, recent rent or utility receipt, printed personalized checks or other recent banking documents showing that person's name and address, or any other information that the registering official believes is reliable. If the person has no residence and no reasonable expectation of obtaining a residence in the foreseeable future, the person shall so advise the registering official and shall sign a statement provided by the registering official stating that fact. Upon presentation of proof of residence to the registering official or a signed statement that the person has no residence, the person shall be allowed to register. If the person claims that he or she has a residence but does not have any proof of residence, he or she shall be allowed to register but shall furnish proof of residence within 30 days of the day he or she is allowed to register. If a registrant fails to furnish proof of residence within this 30-day period, he or she shall be guilty of a misdemeanor.

(3) 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 or location, whether within the jurisdiction in which he or she is currently registered or to a new jurisdiction inside or outside the state, 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 or location. The law enforcement agency or agencies shall, within three days after receipt of this information, forward a copy of the change of address or location 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 or location.

(2) If the person's new address is in a Department of the Youth Authority facility or a state prison or state mental institution, an official of the place of incarceration, placement, or commitment shall, within 90 days of receipt of the person, forward the registrant's change of address information to the Department of Justice. The agency need not provide a physical address for the registrant but shall indicate that he or she is serving a period of incarceration or commitment in a facility under the agency's jurisdiction. This paragraph shall apply to persons received in a Department of the Youth Authority facility or a state prison or state mental institution on or after January 1, 1999. The Department of Justice shall forward the change of address information to the agency with which the person last registered.

(3) 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) Except as otherwise provided in paragraph (5), and 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 subparagraph (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 5 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 (4) 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 law enforcement agency may authorize persons and entities who receive the information pursuant to paragraph (1) to disclose information to additional persons only if the agency does the following:

(A) Determines that all conditions set forth in paragraph (1) have been satisfied regarding disclosure to the additional persons.

(B) Identifies the appropriate scope of further disclosure.

(3) Persons notified pursuant to paragraph (1) may disclose the information provided by the law enforcement agency in the manner and to the extent authorized by the law enforcement agency.

(4) 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 must 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.

(5) 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.

(6) 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.

(7) 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.

(8) 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.

(9) A law enforcement agency may continue to disclose information on 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 elsewhere 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 also meets one 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 12022.53 or 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 any of the following: 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 or California State University, or 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 sex 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.

(4) Notwithstanding any other provision of law, any person described in paragraph (2) of subdivision (p) who receives information from a designated law enforcement entity pursuant to paragraph (3) of subdivision (n) may disclose that information in the manner and to the extent authorized by the law enforcement entity.

(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) (1) Any law enforcement agency and employees of any law enforcement agency 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 of California, every district attorney, and every state or local agency expressly authorized by statute to investigate or prosecute law violators.

(2) Any public or private educational institution, day care facility, or any child care custodian described in Section 11165.7, or any employee of a public or private educational institution or day care facility which in good faith disseminates information as authorized pursuant to paragraph (3) of subdivision (m) or paragraph (4) of subdivision (n) that is provided by a law enforcement agency or an employee of a law enforcement agency shall be immune from civil liability.

(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. 1.4. 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, or changing his or her residence or location within, any city, county, or city and county, or campus 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, and place of employment, including the name and address of the employer, 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 no less than once every 90 days and place of employment, including the name and address of the employer, 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. The registering agency shall submit registrations, including annual updates or changes of address, directly into the Department of Justice Violent Crime Information Network (VCIN).

(2) The following persons shall be required to register pursuant to paragraph (1):

(A) Any person who, since July 1, 1944, has been or is hereafter 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 is hereafter 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 or sentencing 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 or sentencing 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, which demonstrate 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, granted conditional release without supervised 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 all of the following:

(A) A preregistration statement in writing, signed by the person, giving information that shall be required by the Department of Justice.

(B) The fingerprints and photograph of the person.

(C) Any person who is preregistered pursuant to this subdivision is required to be preregistered only once.

(2) 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 shall be required by the Department of Justice and giving the name and address of the person's employer, and the address of the person's place of employment if that is different from the employer's main address.

(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.

(E) Copies of adequate proof of residence, which shall be limited to a California driver's license, California identification card, recent rent or utility receipt, printed personalized checks or other recent banking documents showing that person's name and address, or any other information that the registering official believes is reliable. If the person has no residence and no reasonable expectation of obtaining a residence in the foreseeable future, the person shall so advise the registering official and shall sign a statement provided by the registering official stating that fact. Upon presentation of proof of residence to the registering official or a signed statement that the person has no residence, the person shall be allowed to register. If the person claims that he or she has a residence but does not have any proof of residence, he or she shall be allowed to register but shall furnish proof of residence within 30 days of the day he or she is allowed to register. If a registrant fails to furnish proof of residence within this 30-day period, he or she shall be guilty of a misdemeanor.

(3) 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 or location, whether within the jurisdiction in which he or she is currently registered or to a new jurisdiction inside or outside the state, 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 or location. The law enforcement agency or agencies shall, within three days after receipt of this information, forward a copy of the change of address or location 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 or location.

(2) If the person's new address is in a Department of the Youth Authority facility or a state prison or state mental institution, an official of the place of incarceration, placement, or commitment shall, within 90 days of receipt of the person, forward the registrant's change of address information to the Department of Justice. The agency need not provide a physical address for the registrant but shall indicate that he or she is serving a period of incarceration or commitment in a facility under the agency's jurisdiction. This paragraph shall apply to persons received in a Department of the Youth Authority facility or a state prison or state mental institution on or after January 1, 1999. The Department of Justice shall forward the change of address information to the agency with which the person last registered.

(3) 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) Except as otherwise provided in paragraph (5), and 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 subparagraph (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 5 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 (4) 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 law enforcement agency may authorize persons and entities who receive the information pursuant to paragraph (1) to disclose information to additional persons only if the agency does the following:

(A) Determines that all conditions set forth in paragraph (1) have been satisfied regarding disclosure to the additional persons.

(B) Identifies the appropriate scope of further disclosure.

(3) Persons notified pursuant to paragraph (1) may disclose the information provided by the law enforcement agency in the manner and to the extent authorized by the law enforcement agency.

(4) 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 residence address, which must 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.

(5) 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.

(6) 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.

(7) 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.

(8) 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.

(9) A law enforcement agency may continue to disclose information on 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 elsewhere 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 also meets one 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 12022.53 or 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 any of the following: 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 or California State University, or 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 sex 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 residence and employment 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.

(4) Notwithstanding any other provision of law, any person described in paragraph (2) of subdivision (p) who receives information from a designated law enforcement entity pursuant to paragraph (3) of subdivision (n) may disclose that information in the manner and to the extent authorized by the law enforcement entity.

(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) (1) Any law enforcement agency and employees of any law enforcement agency 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 of California, every district attorney, and every state or local agency expressly authorized by statute to investigate or prosecute law violators.

(2) Any public or private educational institution, day care facility, or any child care custodian described in Section 11165.7, or any employee of a public or private educational institution or day care facility which in good faith disseminates information as authorized pursuant to paragraph (3) of subdivision (m) or paragraph (4) of subdivision (n) that is provided by a law enforcement agency or an

employee of a law enforcement agency shall be immune from civil liability.

(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. 2. 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; Section 269; 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 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 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 any law enforcement agency 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 of California, every district attorney, and every state or local 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. 2.5. 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; Section 269; 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 any law enforcement agency 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 of California, every district attorney, and every state or local 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. 3. (a) Section 1.1 of this bill incorporates amendments to Section 290 of the Penal Code proposed by this bill, AB 796, AB 1078, and AB 1927. It shall only become operative if (1) all four bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 290 of the Penal Code, (3) SB 2116 and SB 2168 are not enacted or as enacted do not amend that section, and (4) this bill is enacted after AB 796, AB 1078, and AB 1927, in which case Sections 1, 1.2, 1.3, and 1.4 of this bill shall not become operative.

(b) Section 1.2 of this bill incorporates amendments to Section 290 of the Penal Code proposed by this bill, AB 796, AB 1078, AB 1927, and SB 2116. It shall only become operative if (1) all five bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 290 of the Penal Code, (3) SB 2168 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 796, AB 1078, AB 1927, and SB 2116, in which case Sections 1, 1.1, 1.3, and 1.4 of this bill shall not become operative.

(c) Section 1.3 of this bill incorporates amendments to Section 290 of the Penal Code proposed by this bill, AB 796, AB 1078, AB 1927, and SB 2168. It shall only become operative if (1) all five bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 290 of the Penal Code, (3) SB 2116 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 796, AB 1078, AB 1927, and SB 2168, in which case Section 290 of the Penal Code as amended by SB 2168, shall remain operative only until the operative date of this bill, at which time Section 1.3 of this bill shall become operative, and Sections 1, 1.1, 1.2, and 1.4 of this bill shall not become operative.

(d) Section 1.4 of this bill incorporates amendments to Section 290 of the Penal Code proposed by this bill, AB 796, AB 1078, AB 1927, SB 2116, and SB 2168. It shall only become operative if (1) all six bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 290 of the Penal Code, and (3) this bill is enacted after AB 796, AB 1078, AB 1927, SB 2116, and SB 2168, in which case Section 290 of the Penal Code as amended by SB 2168, shall remain operative only until the operative date of this bill, at which time Section 1.4 of this bill shall become operative, and Sections 1, 1.1, 1.2, and 1.3 of this bill shall not become operative.

SEC. 4. Section 2.5 of this bill incorporates amendments to Section 290.4 of the Penal Code proposed by both this bill and AB

2799. 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 290.4 of the Penal Code, and (3) this bill is enacted after AB 2799, in which case Section 2 of this bill shall not become operative.

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 930

An act to amend Section 290 of the Penal Code, relating to sex offenders.

[Approved by Governor September 28, 1998. Filed with Secretary of State September 28, 1998.]

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

SECTION 1. 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 is hereafter 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 is hereafter 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, which demonstrate 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.

(C) Any person who is preregistered pursuant to this subdivision is required to be preregistered only once.

(2) 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.

(3) 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 subparagraph (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 5 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 (4) 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 law enforcement agency may authorize persons and entities who receive the information pursuant to paragraph (1) to disclose information to additional persons only if the agency does the following:

(A) Determines that all conditions set forth in paragraph (1) have been satisfied regarding disclosure to the additional persons.

(B) Identifies the appropriate scope of further disclosure.

(3) Persons notified pursuant to paragraph (1) may disclose the information provided by the law enforcement agency in the manner and to the extent authorized by the law enforcement agency.

(4) 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 must 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.

(5) 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.

(6) 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.

(7) 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.

(8) 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.

(9) A law enforcement agency may continue to disclose information on 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 elsewhere 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 also meets one 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 any of the following: 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 or California State University, or 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) (1) Any law enforcement agency and employees of any law enforcement agency 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 of California, every district attorney, and every state or local agency expressly authorized by statute to investigate or prosecute law violators.

(2) Any public or private educational institution, day care facility, or any child care custodian described in Section 11165.7, or any employee of a public or private educational institution or day care facility which in good faith disseminates information as authorized pursuant to paragraph (3) of subdivision (m) that is provided by a law enforcement agency or an employee of a law enforcement agency shall be immune from civil liability.

(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. 1.1. 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, or changing his or her residence or location within, any city, county, or city and county, or campus 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 no less than once 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. The registering agency shall submit registrations, including annual updates or changes of address, directly into the Department of Justice Violent Crime Information Network (VCIN).

(2) The following persons shall be required to register pursuant to paragraph (1):

(A) Any person who, since July 1, 1944, has been or is hereafter 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 is hereafter 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 or sentencing 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 or sentencing 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, which demonstrate 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, granted conditional release without supervised 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 all 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.

(C) Any person who is preregistered pursuant to this subdivision is required to be preregistered only once.

(2) 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.

(E) Copies of adequate proof of residence, which shall be limited to a California driver's license, California identification card, recent rent or utility receipt, printed personalized checks or other recent banking documents showing that person's name and address, or any other information that the registering official believes is reliable. If the person has no residence and no reasonable expectation of obtaining a residence in the foreseeable future, the person shall so

advise the registering official and shall sign a statement provided by the registering official stating that fact. Upon presentation of proof of residence to the registering official or a signed statement that the person has no residence, the person shall be allowed to register. If the person claims that he or she has a residence but does not have any proof of residence, he or she shall be allowed to register but shall furnish proof of residence within 30 days of the day he or she is allowed to register. If a registrant fails to furnish proof of residence within this 30-day period, he or she shall be guilty of a misdemeanor.

(3) 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 or location, whether within the jurisdiction in which he or she is currently registered or to a new jurisdiction inside or outside the state, 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 or location. The law enforcement agency or agencies shall, within three days after receipt of this information, forward a copy of the change of address or location 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 or location.

(2) If the person's new address is in a Department of the Youth Authority facility or a state prison or state mental institution, an official of the place of incarceration, placement, or commitment shall, within 90 days of receipt of the person, forward the registrant's change of address information to the Department of Justice. The agency need not provide a physical address for the registrant but shall indicate that he or she is serving a period of incarceration or commitment in a facility under the agency's jurisdiction. This paragraph shall apply to persons received in a Department of the Youth Authority facility or a state prison or state mental institution on or after January 1, 1999. The Department of Justice shall forward the change of address information to the agency with which the person last registered.

(3) 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) Except as otherwise provided in paragraph (5), and 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 subparagraph (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 5 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 (4) 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 law enforcement agency may authorize persons and entities who receive the information pursuant to paragraph (1) to disclose information to additional persons only if the agency does the following:

(A) Determines that all conditions set forth in paragraph (1) have been satisfied regarding disclosure to the additional persons.

(B) Identifies the appropriate scope of further disclosure.

(3) Persons notified pursuant to paragraph (1) may disclose the information provided by the law enforcement agency in the manner and to the extent authorized by the law enforcement agency.

(4) 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 must 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.

(5) 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.

(6) 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.

(7) 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.

(8) 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.

(9) A law enforcement agency may continue to disclose information on 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 elsewhere 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 also meets one 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 any of the following: 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 or California State University, or 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.

(4) Notwithstanding any other provision of law, any person described in paragraph (2) of subdivision (p) who receives information from a designated law enforcement entity pursuant to paragraph (3) of subdivision (n) may disclose that information in the manner and to the extent authorized by the law enforcement entity.

(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) (1) Any law enforcement agency and employees of any law enforcement agency 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 of California,

every district attorney, and every state or local agency expressly authorized by statute to investigate or prosecute law violators.

(2) Any public or private educational institution, day care facility, or any child care custodian described in Section 11165.7, or any employee of a public or private educational institution or day care facility which in good faith disseminates information as authorized pursuant to paragraph (3) of subdivision (m) or paragraph (4) of subdivision (n) that is provided by a law enforcement agency or an employee of a law enforcement agency shall be immune from civil liability.

(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. 1.2. 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, or changing his or her residence or location within, any city, county, or city and county, or campus 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, and place of employment, including the name and address of the employer, 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 no less than once every 90 days and place of employment, including the name and address of the employer, 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. The registering agency shall submit registrations, including annual updates or changes of address, directly into the Department of Justice Violent Crime Information Network (VCIN).

(2) The following persons shall be required to register pursuant to paragraph (1):

(A) Any person who, since July 1, 1944, has been or is hereafter 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 is hereafter 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 or sentencing 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 or sentencing 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, which demonstrate 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, granted conditional release without supervised 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 all of the following:

(A) A preregistration statement in writing, signed by the person, giving information that shall be required by the Department of Justice.

(B) The fingerprints and photograph of the person.

(C) Any person who is preregistered pursuant to this subdivision is required to be preregistered only once.

(2) 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 shall be required by the Department of Justice and giving the name and address of the person's employer, and the address of the person's place of employment if that is different from the employer's main address.

(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.

(E) Copies of adequate proof of residence, which shall be limited to a California driver's license, California identification card, recent rent or utility receipt, printed personalized checks or other recent banking documents showing that person's name and address, or any other information that the registering official believes is reliable. If the person has no residence and no reasonable expectation of

obtaining a residence in the foreseeable future, the person shall so advise the registering official and shall sign a statement provided by the registering official stating that fact. Upon presentation of proof of residence to the registering official or a signed statement that the person has no residence, the person shall be allowed to register. If the person claims that he or she has a residence but does not have any proof of residence, he or she shall be allowed to register but shall furnish proof of residence within 30 days of the day he or she is allowed to register. If a registrant fails to furnish proof of residence within this 30-day period, he or she shall be guilty of a misdemeanor.

(3) 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 or location, whether within the jurisdiction in which he or she is currently registered or to a new jurisdiction inside or outside the state, 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 or location. The law enforcement agency or agencies shall, within three days after receipt of this information, forward a copy of the change of address or location 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 or location.

(2) If the person's new address is in a Department of the Youth Authority facility or a state prison or state mental institution, an official of the place of incarceration, placement, or commitment shall, within 90 days of receipt of the person, forward the registrant's change of address information to the Department of Justice. The agency need not provide a physical address for the registrant but shall indicate that he or she is serving a period of incarceration or commitment in a facility under the agency's jurisdiction. This paragraph shall apply to persons received in a Department of the Youth Authority facility or a state prison or state mental institution on or after January 1, 1999. The Department of Justice shall forward the change of address information to the agency with which the person last registered.

(3) 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) Except as otherwise provided in paragraph (5), and 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 subparagraph (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 5 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 (4) 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 law enforcement agency may authorize persons and entities who receive the information pursuant to paragraph (1) to disclose information to additional persons only if the agency does the following:

(A) Determines that all conditions set forth in paragraph (1) have been satisfied regarding disclosure to the additional persons.

(B) Identifies the appropriate scope of further disclosure.

(3) Persons notified pursuant to paragraph (1) may disclose the information provided by the law enforcement agency in the manner and to the extent authorized by the law enforcement agency.

(4) 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 residence address, which must 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.

(5) 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.

(6) 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.

(7) 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.

(8) 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.

(9) A law enforcement agency may continue to disclose information on 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 elsewhere 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 also meets one 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 any of the following: 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 or California State University, or 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 sex 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 residence and employment 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.

(4) Notwithstanding any other provision of law, any person described in paragraph (2) of subdivision (p) who receives information from a designated law enforcement entity pursuant to paragraph (3) of subdivision (n) may disclose that information in the manner and to the extent authorized by the law enforcement entity.

(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) (1) Any law enforcement agency and employees of any law enforcement agency 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 of California,

every district attorney, and every state or local agency expressly authorized by statute to investigate or prosecute law violators.

(2) Any public or private educational institution, day care facility, or any child care custodian described in Section 11165.7, or any employee of a public or private educational institution or day care facility which in good faith disseminates information as authorized pursuant to paragraph (3) of subdivision (m) or paragraph (4) of subdivision (n) that is provided by a law enforcement agency or an employee of a law enforcement agency shall be immune from civil liability.

(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. 1.3. 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, or changing his or her residence or location within, any city, county, or city and county, or campus 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 no less than once 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. The registering agency shall submit registrations, including annual updates or changes of address, directly into the Department of Justice Violent Crime Information Network (VCIN).

(2) The following persons shall be required to register pursuant to paragraph (1):

(A) Any person who, since July 1, 1944, has been or is hereafter 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 is hereafter 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 or sentencing 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 or sentencing 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, which demonstrate 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, granted conditional release

without supervised 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 all 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.

(C) Any person who is preregistered pursuant to this subdivision is required to be preregistered only once.

(2) 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.

(E) Copies of adequate proof of residence, which shall be limited to a California driver's license, California identification card, recent rent or utility receipt, printed personalized checks or other recent banking documents showing that person's name and address, or any other information that the registering official believes is reliable. If the person has no residence and no reasonable expectation of obtaining a residence in the foreseeable future, the person shall so advise the registering official and shall sign a statement provided by the registering official stating that fact. Upon presentation of proof of residence to the registering official or a signed statement that the person has no residence, the person shall be allowed to register. If the

person claims that he or she has a residence but does not have any proof of residence, he or she shall be allowed to register but shall furnish proof of residence within 30 days of the day he or she is allowed to register. If a registrant fails to furnish proof of residence within this 30-day period, he or she shall be guilty of a misdemeanor.

(3) 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 or location, whether within the jurisdiction in which he or she is currently registered or to a new jurisdiction inside or outside the state, 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 or location. The law enforcement agency or agencies shall, within three days after receipt of this information, forward a copy of the change of address or location 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 or location.

(2) If the person's new address is in a Department of the Youth Authority facility or a state prison or state mental institution, an official of the place of incarceration, placement, or commitment shall, within 90 days of receipt of the person, forward the registrant's change of address information to the Department of Justice. The agency need not provide a physical address for the registrant but shall indicate that he or she is serving a period of incarceration or commitment in a facility under the agency's jurisdiction. This paragraph shall apply to persons received in a Department of the Youth Authority facility or a state prison or state mental institution on or after January 1, 1999. The Department of Justice shall forward the change of address information to the agency with which the person last registered.

(3) 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) Except as otherwise provided in paragraph (5), and 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 subparagraph (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 5 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 (4) 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 law enforcement agency may authorize persons and entities who receive the information pursuant to paragraph (1) to disclose information to additional persons only if the agency does the following:

(A) Determines that all conditions set forth in paragraph (1) have been satisfied regarding disclosure to the additional persons.

(B) Identifies the appropriate scope of further disclosure.

(3) Persons notified pursuant to paragraph (1) may disclose the information provided by the law enforcement agency in the manner and to the extent authorized by the law enforcement agency.

(4) 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 must 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.

(5) 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.

(6) 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.

(7) 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.

(8) 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.

(9) A law enforcement agency may continue to disclose information on 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 elsewhere 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 also meets one 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 12022.53 or 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 any of the following: 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 or California State University, or 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 sex 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.

(4) Notwithstanding any other provision of law, any person described in paragraph (2) of subdivision (p) who receives information from a designated law enforcement entity pursuant to paragraph (3) of subdivision (n) may disclose that information in the manner and to the extent authorized by the law enforcement entity.

(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) (1) Any law enforcement agency and employees of any law enforcement agency 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 of California, every district attorney, and every state or local agency expressly authorized by statute to investigate or prosecute law violators.

(2) Any public or private educational institution, day care facility, or any child care custodian described in Section 11165.7, or any employee of a public or private educational institution or day care facility which in good faith disseminates information as authorized

pursuant to paragraph (3) of subdivision (m) or paragraph (4) of subdivision (n) that is provided by a law enforcement agency or an employee of a law enforcement agency shall be immune from civil liability.

(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. 1.4. 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, or changing his or her residence or location within, any city, county, or city and county, or campus 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, and place of employment, including the name and address of the employer, 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 no less than once every 90 days and place of employment, including the name and address of the employer, 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. The registering agency shall submit registrations, including annual updates or changes of address, directly into the Department of Justice Violent Crime Information Network (VCIN).

(2) The following persons shall be required to register pursuant to paragraph (1):

(A) Any person who, since July 1, 1944, has been or is hereafter 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 is hereafter 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

or sentencing 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 or sentencing 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, which demonstrate 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, granted conditional release without supervised 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 all of the following:

(A) A preregistration statement in writing, signed by the person, giving information that shall be required by the Department of Justice.

(B) The fingerprints and photograph of the person.

(C) Any person who is preregistered pursuant to this subdivision is required to be preregistered only once.

(2) 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 shall be required by the Department of Justice and giving the name and address of the person's employer, and the address of the person's place of employment if that is different from the employer's main address.

(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.

(E) Copies of adequate proof of residence, which shall be limited to a California driver's license, California identification card, recent rent or utility receipt, printed personalized checks or other recent banking documents showing that person's name and address, or any other information that the registering official believes is reliable. If the person has no residence and no reasonable expectation of obtaining a residence in the foreseeable future, the person shall so advise the registering official and shall sign a statement provided by the registering official stating that fact. Upon presentation of proof of residence to the registering official or a signed statement that the person has no residence, the person shall be allowed to register. If the

person claims that he or she has a residence but does not have any proof of residence, he or she shall be allowed to register but shall furnish proof of residence within 30 days of the day he or she is allowed to register. If a registrant fails to furnish proof of residence within this 30-day period, he or she shall be guilty of a misdemeanor.

(3) 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 or location, whether within the jurisdiction in which he or she is currently registered or to a new jurisdiction inside or outside the state, 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 or location. The law enforcement agency or agencies shall, within three days after receipt of this information, forward a copy of the change of address or location 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 or location.

(2) If the person's new address is in a Department of the Youth Authority facility or a state prison or state mental institution, an official of the place of incarceration, placement, or commitment shall, within 90 days of receipt of the person, forward the registrant's change of address information to the Department of Justice. The agency need not provide a physical address for the registrant but shall indicate that he or she is serving a period of incarceration or commitment in a facility under the agency's jurisdiction. This paragraph shall apply to persons received in a Department of the Youth Authority facility or a state prison or state mental institution on or after January 1, 1999. The Department of Justice shall forward the change of address information to the agency with which the person last registered.

(3) 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) Except as otherwise provided in paragraph (5), and 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 subparagraph (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 5 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 (4) 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 law enforcement agency may authorize persons and entities who receive the information pursuant to paragraph (1) to disclose information to additional persons only if the agency does the following:

(A) Determines that all conditions set forth in paragraph (1) have been satisfied regarding disclosure to the additional persons.

(B) Identifies the appropriate scope of further disclosure.

(3) Persons notified pursuant to paragraph (1) may disclose the information provided by the law enforcement agency in the manner and to the extent authorized by the law enforcement agency.

(4) 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 residence address, which must 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.

(5) 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.

(6) 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.

(7) 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.

(8) 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.

(9) A law enforcement agency may continue to disclose information on 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 elsewhere 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 also meets one 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 12022.53 or 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 any of the following: 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 or California State University, or 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 sex 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 residence and employment 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.

(4) Notwithstanding any other provision of law, any person described in paragraph (2) of subdivision (p) who receives information from a designated law enforcement entity pursuant to paragraph (3) of subdivision (n) may disclose that information in the manner and to the extent authorized by the law enforcement entity.

(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) (1) Any law enforcement agency and employees of any law enforcement agency 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 of California, every district attorney, and every state or local agency expressly authorized by statute to investigate or prosecute law violators.

(2) Any public or private educational institution, day care facility, or any child care custodian described in Section 11165.7, or any employee of a public or private educational institution or day care facility which in good faith disseminates information as authorized

pursuant to paragraph (3) of subdivision (m) or paragraph (4) of subdivision (n) that is provided by a law enforcement agency or an employee of a law enforcement agency shall be immune from civil liability.

(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. 2. (a) Section 1.1 of this bill incorporates amendments to Section 290 of the Penal Code proposed by this bill, AB 796, AB 1745, and AB 1927. It shall only become operative if (1) all four bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 290 of the Penal Code, (3) SB 2116 and SB 2168 are not enacted or as enacted do not amend that section, and (4) this bill is enacted after AB 796, AB 1745, and AB 1927, in which case Sections 1, 1.2, 1.3, and 1.4 of this bill shall not become operative.

(b) Section 1.2 of this bill incorporates amendments to Section 290 of the Penal Code proposed by this bill, AB 796, AB 1745, AB 1927, and SB 2116. It shall only become operative if (1) all five bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 290 of the Penal Code, (3) SB 2168 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 796, AB 1745, AB 1927, and SB 2116, in which case Sections 1, 1.1, 1.3, and 1.4 of this bill shall not become operative.

(c) Section 1.3 of this bill incorporates amendments to Section 290 of the Penal Code proposed by this bill, AB 796, AB 1745, AB 1927, and SB 2168. It shall only become operative if (1) all five bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 290 of the Penal Code, (3) SB 2116 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 796, AB 1745, AB 1927, and SB 2168, in which case Section 290 of the Penal Code as amended by SB 2168, shall remain operative only until the operative date of this bill, at which time Section 1.3 of this bill shall become operative, and Sections 1, 1.1, 1.2, and 1.4 of this bill shall not become operative.

(d) Section 1.4 of this bill incorporates amendments to Section 290 of the Penal Code proposed by this bill, AB 796, AB 1745, AB 1927, SB 2116, and SB 2168. It shall only become operative if (1) all six bills are

enacted and become effective on or before January 1, 1999, (2) each bill amends Section 290 of the Penal Code, and (3) this bill is enacted after AB 796, AB 1745, AB 1927, SB 2116, and SB 2168, in which case Section 290 of the Penal Code as amended by SB 2168, shall remain operative only until the operative date of this bill, at which time Section 1.4 of this bill shall become operative, and Sections 1, 1.1, 1.2, and 1.3 of this bill shall not become operative.

SEC. 3. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

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

CHAPTER 931

An act to amend Sections 470.3, 6152, 6301, 6302.5, 6321, 6322, 6341, 7028.2, 17209, 17536.5, and 25762 of the Business and Professions Code, to amend Sections 798.61, 1181, 1719, 1780, 1812.10, 2984.4, and 3342.5 of the Civil Code, to amend Sections 77, 82, 84, 86, 86.1, 91, 116.120, 116.210, 116.231, 116.250, 116.760, 116.770, 116.940, 116.950, 134, 166, 170.5, 170.7, 179, 194, 195, 198.5, 200, 215, 217, 234, 269, 274a, 274c, 392, 393, 395, 396, 396a, 400, 402, 422.30, 425.10, 425.11, 489.220, 564, 575, 575.1, 580, 581d, 594, 628, 631, 632, 655, 668, 670, 685.030, 688.010, 697.310, 697.350, 697.540, 703.600, 706.105, 708.180, 720.160, 720.260, 720.420, 871.3, 904.1, 904.2, 904.5, 911, 912, 996.430, 1014, 1033, 1052, 1052.5, 1060, 1068, 1085, 1103, 1134, 1140, 1141.11, 1141.12, 1161.2, 1167.2, 1171, 1206, 1281.5, 1283.05, 1287.4, 1710.20, 1775.1, and 2015.3 of, to amend the heading of Chapter 5 (commencing with Section 81) of Title 1 of Part 1 of, to add Sections 32.5, 38, 395.9, 399.5, 402.5, and 582.5 to, to add Chapter 5.1 (commencing with Section 85) to Title 1 of Part 1 of, and to add a heading to Article 1 (commencing with Section 85) and Article 2 (commencing with Section 90) to Chapter 5.1 of Title 1 of Part 1 of, and to repeal Sections 83, 85, 87, 88, 89, and 422.20 of, and to repeal the headings of Article 1 (commencing with Section 81) and Article 2 (commencing with Section 90) of Chapter 5 of Title 1 of Part 1 of, the Code of Civil Procedure, to amend Sections 44944, 45312, 48294, 48295, 87675, 87679, and 88131 of the Education Code, to amend Sections 325, 327, 8203, 13107, 13109, and 13111 of the Elections Code, to amend Section 300 of the Evidence Code, to

amend Section 400 of the Family Code, to amend Sections 1785, 1824, 1893, 3102, 17335, 18415.2, 18495, 31713, and 34113 of, and to amend and repeal Section 16154 of, the Financial Code, to amend Sections 210, 309, 2357, 4341, 4755, 5934, 12150, and 12151 of the Fish and Game Code, to amend Sections 7581, 12647, 25564, 27601, 29733, 30801, 31503, 31621, 31622, 43039, 52514, 53564, and 59289 of the Food and Agricultural Code, to amend Sections 910, 945.3, 990.2, 1770, 3501.6, 6701, 11189, 11511, 12965, 12972, 12980, 15422, 18671, 23220, 23296, 23398, 23579, 24055, 24057, 25351.3, 25560.4, 26299.008, 26524, 26665, 26806, 26820, 26820.4, 26824, 26826, 26826.01, 26863, 27082, 27647, 27706, 28003, 29603, 29610, 31469, 41606, 50920, 53069.4, 53075.6, 53075.61, 53679, 68071, 68072, 68074.1, 68081, 68084, 68086, 68090.7, 68093, 68098, 68108, 68112, 68114, 68114.5, 68114.6, 68115, 68152, 68206.2, 68505, 68513, 68540, 68542, 68542.5, 68546, 68547, 68551, 68620, 68902, 69510, 69744.5, 69746.5, 69753, 69957, 70141, 71002, 71004, 71010, 71040, 71042.5, 71045, 71080, 71083, 71085, 71088, 71091, 71092, 71093, 71094, 71095, 71098, 71099, 71100, 71140, 71141, 71143, 71145, 71180.5, 71181, 71220, 71221, 71264, 71267, 71280, 71280.1, 71280.2, 71280.3, 71280.4, 71280.5, 71340, 71341, 71380, 71381, 71382, 71384, 71386, 72055, 72056, 72056.01, 72056.1, 72060, 72190, 72190.1, 72190.2, 72193, 72194.5, 72196, 72197, 72198, 72301, 72302, 72604, 75101, 75103, 75602, 77003, and 77007 of, to amend the headings of Chapter 6 (commencing with Section 71001) of Title 8 of, Article 7 (commencing with Section 71260) of Chapter 6 of Title 8 of, Article 10 (commencing with Section 71380) of Chapter 6 of Title 8 of, and Chapter 8 (commencing with Section 72000) of Title 8 of, to add Sections 3075 and 70140 to, to repeal and add Chapter 5.1 (commencing with Section 70200) of Title 8 of, to repeal Sections 29605, 68078, 68202.5, 68541, 69741.7, 71080.5, 71080.6, 71080.7, 71084, 71087, 71091.1, 71096, 71097, 71180.3, 71180.4, 71181.1, and 72785 of, and to repeal Chapter 7 (commencing with Section 71600) of Title 8 of, the Government Code, to amend Sections 664 and 667 of the Harbors and Navigation Code, to amend Sections 108580, 111880, 111895, 117070, and 117120 of the Health and Safety Code, to amend Section 12961 of the Insurance Code, to amend Sections 98, 98.2, 3352, 5710, and 6613 of the Labor Code, to amend Section 467 of the Military and Veterans Code, to amend Sections 190.9, 682, 691, 726, 737, 740, 804, 806, 808, 810, 813, 827, 829, 830.1, 832.4, 851.8, 859, 859a, 860, 869, 949, 977, 977.2, 977.4, 987.1, 987.2, 988, 990, 1000, 1007, 1009, 1010, 1016, 1038, 1050, 1130, 1150, 1187, 1191, 1203.1, 1203.1c, 1214, 1235, 1269, 1269b, 1278, 1281a, 1327, 1368.1, 1382, 1424, 1427, 1428, 1429, 1429.5, 1447, 1449, 1458, 1459, 1462, 1462.2, 1463, 1463.1, 1463.22, 1466, 1468, 1471, 1538.5, 2620, 2621, 2623, 3076, 4004, 4022, 4024.1, 4112, 13125, 13151, and 14154 of, to amend the headings of Title 9 (commencing with Section 1235) and Title 11 (commencing with Section 1427) of Part 2 of, Chapter 1 (commencing with Section 1427), Chapter 2 (commencing with Section 1466), and Chapter 3 (commencing with Section 1471) of, Title 11 of Part 2 of, to add Sections 859c and 1039 to, and to repeal

Sections 97, 1309, and 1462.1 of, the Penal Code, to amend Sections 3357, 3769, and 5560 of the Public Resources Code, to amend Sections 1794, 5411.5, and 103100 of the Public Utilities Code, to amend Sections 6776, 6777, 19232, 19233, and 19280 of the Revenue and Taxation Code, to amend Sections 1785 and 1786 of the Unemployment Insurance Code, to amend Sections 2802.5, 9872.1, 10751, 11205, 14607.6, 27360, 40230, 40256, 40502, 40506.5, 40508.6, 42008, and 42203 of the Vehicle Code, to amend Sections 310 and 1100 of the Water Code, to amend Sections 245, 255, 601.4, 603.5, 656, 661, 742.16, 3050, 3051, 3200, and 11350.7 of the Welfare and Institutions Code, to amend Section 22 of Chapter 201 of the Statutes of 1895, and to amend Section 4 of Chapter 238 of the Statutes of 1903, relating to courts, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 28, 1998. Filed with Secretary of State September 28, 1998.]

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

SECTION 1. Section 470.3 of the Business and Professions Code is amended to read:

470.3. (a) Except as provided in subdivision (b), a fee of not less than one dollar ($1) and not more than eight dollars ($8) may be added to the total fees collected and fixed pursuant to Sections 26820.4, 26826, 26827, 68090, 72055, and 72056 of the Government Code for the filing of a first paper in a civil action in superior or municipal court, other than a small claims action.

(b) A fee of not less than one dollar ($1) and not more than three dollars ($3) may be added to the total fees collected and fixed pursuant to Sections 26820.4, 26826, 26827, 68090, 72055, and 72056 of the Government Code for the filing of a first paper in a civil action in superior or municipal court, for those cases where the monetary damages do not exceed the sum of two thousand five hundred dollars ($2,500). To facilitate the computation of the correct fee pursuant to this section, the complaint shall contain a declaration under penalty of perjury executed by a party requesting a reduction in fees that the case filed qualifies for the lower fee because claim for money damages will not exceed the sum of two thousand five hundred dollars ($2,500).

(c) The fees described in subdivisions (a) and (b) shall only be utilized for the support of the dispute resolution programs authorized by this chapter.

(d) A county may carry over moneys received from the additional fees authorized pursuant to subdivisions (a) and (b), that shall be deposited in a special fund created for those purposes, until such time as the county elects to fund a dispute resolution program. Records of

those fees shall be available for inspection by the public, upon request.

SEC. 2. Section 6152 of the Business and Professions Code is amended to read:

6152. (a) It is unlawful for:

(1) Any person, in an individual capacity or in a capacity as a public or private employee, or for any firm, corporation, partnership or association to act as a runner or capper for any attorneys or to solicit any business for any attorneys in and about the state prisons, county jails, city jails, city prisons, or other places of detention of persons, city receiving hospitals, city and county receiving hospitals, county hospitals, municipal courts, superior courts, or in any public institution or in any public place or upon any public street or highway or in and about private hospitals, sanitariums or in and about any private institution or upon private property of any character whatsoever.

(2) Any person to solicit another person to commit or join in the commission of a violation of subdivision (a).

(b) A general release from a liability claim obtained from any person during the period of the first physical confinement, whether as an inpatient or outpatient, in a clinic or health facility, as defined in Sections 1203 and 1250 of the Health and Safety Code, as a result of the injury alleged to have given rise to the claim and primarily for treatment of the injury, is presumed fraudulent if the release is executed within 15 days after the commencement of confinement or prior to release from confinement, whichever occurs first.

(c) Nothing in this section shall be construed to prevent the recommendation of professional employment where that recommendation is not prohibited by the Rules of Professional Conduct of the State Bar of California.

(d) Nothing in this section shall be construed to mean that a public defender or assigned counsel may not make known his or her services as a criminal defense attorney to persons unable to afford legal counsel whether those persons are in custody or otherwise.

SEC. 3. Section 6301 of the Business and Professions Code is amended to read:

6301. A board of law library trustees is constituted as follows:

(a) In a county where there are no more than three judges of the superior court, each of those judges is ex officio a trustee; in a county where there are more than three judges of the superior court, the judges of the court shall elect three of their number to serve as trustees. However, where there are no more than three judges of the superior court, the judges may at their option select only one of their number to serve as a trustee, and in that event they shall appoint two additional trustees who are members of the bar of the county.

Any judge who is an ex officio or elected member may at the judge's option designate a member of the bar of the county to act for the judge as trustee.

(b) In a county with one or two municipal courts the judges of the court or courts shall elect one of their number to serve as trustee. In a county with three or more municipal courts the judges of the courts may elect two of their number to serve as trustees. In a county in which there is no municipal court, the judges of the superior court may elect one or more of their number to serve as trustee, in addition to the trustees elected pursuant to subdivision (a), so that the number of judges elected shall not exceed the number of judge trustees authorized as of January 1, 1998. Any judge who is an elected member may at the judge's option designate a member of the bar of the county to act for the judge as trustee.

(c) The chair of the board of supervisors is ex officio a trustee, but the board of supervisors at the request of the chair may appoint a member of the bar of the county or any other member of the board of supervisors of the county to serve as trustee in place of said chair. The appointment of the person selected in lieu of the chair of the board of supervisors shall expire when a new chair of the board of supervisors is selected, and that appointment shall not be subject to the provisions of Section 6302.

(d) The board of supervisors shall appoint as many additional trustees, who are members of the bar of the county, as may be necessary to constitute a board of six members in any county where one member is elected pursuant to subdivision (b), or of seven members in any county where two members are elected to serve as trustees pursuant to subdivision (b).

SEC. 4. Section 6302.5 of the Business and Professions Code is amended to read:

6302.5. Notwithstanding any other provision of law, in Los Angeles County appointments made by judges of the superior court or municipal court shall be for a term of four years, and appointments made by the board of supervisors of the county shall be for a term of two years.

Trustees who are incumbents on the effective date of this section shall be considered to have started their terms on the effective date of this section.

At the first regular meeting following the effective date of this section, the members appointed by the judiciary shall classify themselves by lot so that three members shall serve for four years, and two members for two years. Thereafter, the term of office of each member so appointed shall be four years.

At the first regular meeting following the effective date of this section, the members appointed by the board of supervisors shall classify themselves by lot so that one member shall serve for two years, and one member for one year. Thereafter the term of office of each member so appointed shall be two years.

SEC. 5. Section 6321 of the Business and Professions Code is amended to read:

6321. On the commencement in, or the removal to, the superior court of any county in this state, of any civil action, proceeding, or appeal, and on the commencement in, or removal to, the municipal court in any county, of any civil action or proceeding, the party instituting such proceeding, or filing the first papers, shall pay to the clerk of the court, for the law library, on filing the first papers, the sum of one dollar ($1) as costs, in addition to the fees fixed by law.

SEC. 6. Section 6322 of the Business and Professions Code is amended to read:

6322. Thereafter, any defendant, respondent, adverse party, or intervening party, on making a first appearance in a superior or municipal court, or any number of defendants, respondents, or parties, appearing jointly, shall pay to the clerk of the court, for the law library, the sum of one dollar ($1) as costs, in addition to the fees fixed by law.

SEC. 7. Section 6341 of the Business and Professions Code is amended to read:

6341. Any board of law library trustees may establish and maintain a branch of the law library in any city in the county, other than the county seat, in which a session of the superior court or of a municipal court is held, or in which a municipal court has been authorized by statute but has not yet begun to operate. In any city constituting the county seat, any board of law library trustees may establish and maintain a branch of the law library at any location therein where four or more judges of the municipal court, or of the superior court in a county in which there is no municipal court, are designated to hold sessions more than 10 miles distant from the principal office of the court. In any city and county any board of law library trustees may establish and maintain branches of the law library. A branch is in all respects a part of the law library and is governed accordingly.

SEC. 8. Section 7028.2 of the Business and Professions Code is amended to read:

7028.2. A criminal complaint pursuant to this chapter may be brought by the Attorney General or by the district attorney or prosecuting attorney of any city, in any county in the state with jurisdiction over the contractor or employer, by reason of the contractor's or employer's act, or failure to act, within that jurisdiction. Any penalty assessed by the court shall be paid to the office of the prosecutor bringing the complaint.

SEC. 9. Section 17209 of the Business and Professions Code is amended to read:

17209. If a violation of this chapter is alleged or the application or construction of this chapter is in issue in any proceeding in the Supreme Court of California, a state court of appeal, or the appellate division of a superior court, the person who commenced that proceeding shall serve notice thereof, including a copy of the person's brief or petition and brief, on the Attorney General, directed

to the attention of the Consumer Law Section, and on the district attorney of the county in which the lower court action or proceeding was originally filed. The notice, including the brief or petition and brief, shall be served within three days after the commencement of the appellate proceeding, provided that the time may be extended by the Chief Justice or presiding justice or judge for good cause shown. No judgment or relief, temporary or permanent, shall be granted until proof of service of this notice is filed with the court.

SEC. 10. Section 17536.5 of the Business and Professions Code is amended to read:

17536.5. If a violation of this chapter is alleged or the application or construction of this chapter is in issue in any proceeding in the Supreme Court of California, a state court of appeal, or the appellate division of a superior court, the person who commenced that proceeding shall serve notice thereof, including a copy of the person's brief or petition and brief, on the Attorney General, directed to the attention of the Consumer Law Section, and on the district attorney of the county in which the lower court action or proceeding was originally filed. The notice, including the brief or petition and brief, shall be served within three days after the commencement of the appellate proceeding, provided that the time may be extended by the Chief Justice or presiding justice or judge for good cause shown. No judgment or relief, temporary or permanent, shall be granted until proof of service of this notice is filed with the court.

SEC. 11. Section 25762 of the Business and Professions Code is amended to read:

25762. All fines and forfeitures of bail imposed for a violation of this division and collected in any court other than a municipal court shall be paid to the county treasurer of the county in which the court is held.

All fines and forfeitures of bail imposed for violation of this division and collected upon conviction or upon forfeiture of bail, together with money deposited as bail, in any municipal court shall be deposited with the county treasurer of the county in which the court is situated and the money deposited shall be distributed and disposed of pursuant to Section 1463 of the Penal Code.

SEC. 12. Section 798.61 of the Civil Code is amended to read:

798.61. (a) (1) As used in this section, "abandoned mobilehome" means a mobilehome about which all of the following are true:

(A) It is located in a mobilehome park on a site for which no rent has been paid to the management for the preceding 60 days.

(B) It is unoccupied.

(C) A reasonable person would believe it to be abandoned.

(2) For purposes of this section:

(A) "Mobilehome" shall include a trailer coach, as defined in Section 635 of the Vehicle Code, or a recreational vehicle, as defined in Section 18010 of the Health and Safety Code, if the trailer coach

or recreational vehicle also satisfies the requirements of paragraph (1), including being located on any site within a mobilehome park, even if the site is in a separate designated section pursuant to Section 18215 of the Health and Safety Code.

(B) "Abandoned mobilehome" shall include a mobilehome that is uninhabitable because of its total or partial destruction that cannot be rehabilitated, if the mobilehome also satisfies the requirements of paragraph (1).

(b) After determining a mobilehome in a mobilehome park to be an abandoned mobilehome, the management shall post a notice of belief of abandonment on the mobilehome for not less than 30 days, and shall deposit copies of the notice in the United States mail, postage prepaid, addressed to the homeowner at the last known address and to any known registered owner, if different from the homeowner, and to any known holder of a security interest in the abandoned mobilehome. This notice shall be mailed by registered or certified mail with a return receipt requested.

(c) Thirty or more days following posting pursuant to subdivision (b), the management may file a petition in the municipal court for the judicial district in which the mobilehome park is located, or in the superior court in a county in which there is no municipal court, for a judicial declaration of abandonment of the mobilehome. A proceeding under this subdivision is a limited civil case. Copies of the petition shall be served upon the homeowner, any known registered owner, and any known person having a lien or security interest of record in the mobilehome by posting a copy on the mobilehome and mailing copies to those persons at their last known addresses by registered or certified mail with a return receipt requested in the United States mail, postage prepaid.

(d) (1) Hearing on the petition shall be given precedence over other matters on the court's calendar.

(2) If, at the hearing, the petitioner shows by a preponderance of the evidence that the criteria for an abandoned mobilehome has been satisfied and no party establishes an interest therein at the hearing, the court shall enter a judgment of abandonment, determine the amount of charges to which the petitioner is entitled, and award attorney's fees and costs to the petitioner. For purposes of this subdivision, an interest in the mobilehome shall be established by evidence of a right to possession of the mobilehome or a security or ownership interest in the mobilehome.

(3) A default may be entered by the court clerk upon request of the petitioner, and a default judgment shall be thereupon entered, if no responsive pleading is filed within 15 days after service of the petition by mail.

(e) (1) Within 10 days following a judgment of abandonment, the management shall enter the abandoned mobilehome and complete an inventory of the contents and submit the inventory to the court.

(2) During this period the management shall post and mail notice of intent to sell the abandoned mobilehome and its contents under this section, and announcing the date of sale, in the same manner as provided for the notice of determination of abandonment under subdivision (b).

(3) At any time prior to the sale of a mobilehome under this section, any person having a right to possession of the mobilehome may recover and remove it from the premises upon payment to the management of all rent or other charges due, including reasonable costs of storage and other costs awarded by the court. Upon receipt of this payment and removal of the mobilehome from the premises pursuant to this paragraph, the management shall immediately file an acknowledgment of satisfaction of judgment pursuant to Section 724.030 of the Code of Civil Procedure.

(f) Following the judgment of abandonment, but not less than 10 days following the notice of sale specified in subdivision (e), the management may conduct a public sale of the abandoned mobilehome and its contents. The management may bid at the sale and shall have the right to offset its bids to the extent of the total amount due it under this section. The proceeds of the sale shall be retained by the management, but any unclaimed amount thus retained over and above the amount to which the management is entitled under this section shall be deemed abandoned property and shall be paid into the treasury of the county in which the sale took place within 30 days of the date of the sale. The former homeowner or any other owner may claim any or all of that unclaimed amount within one year from the date of payment to the county by making application to the county treasurer or other official designated by the county. If the county pays any or all of that unclaimed amount to a claimant, neither the county nor any officer or employee of the county is liable to any other claimant as to the amount paid.

(g) Within 30 days of the date of the sale, the management shall submit to the court an accounting of the moneys received from the sale and the disposition of the money and the items contained in the inventory submitted to the court pursuant to subdivision (e).

(h) The management shall provide the purchaser at the sale with a copy of the judgment of abandonment and evidence of the sale, as shall be specified by the State Department of Housing and Community Development or the Department of Motor Vehicles, which shall register title in the abandoned mobilehome to the purchaser upon presentation thereof. The sale shall pass title to the purchaser free of any prior interest, including any security interest or lien, except the lien provided for in Section 18116.1 of the Health and Safety Code, in the abandoned mobilehome.

SEC. 13. Section 1181 of the Civil Code is amended to read:

1181. The proof or acknowledgment of an instrument may be made before a notary public at any place within this state, or within

the county or city and county in this state in which the officer specified below was elected or appointed, before either:

(a) A clerk of a superior or municipal court.
(b) A county clerk.
(c) A court commissioner.
(d) A judge or retired judge of a municipal or justice court.
(e) A district attorney.
(f) A clerk of a board of supervisors.
(g) A city clerk.
(h) A county counsel.
(i) A city attorney.

SEC. 14. Section 1719 of the Civil Code is amended to read:

1719. (a) (1) Notwithstanding any penal sanctions that may apply, any person who passes a check on insufficient funds shall be liable to the payee for the amount of the check and a service charge payable to the payee for an amount not to exceed twenty-five dollars ($25) for the first check passed on insufficient funds and an amount not to exceed thirty-five dollars ($35) for each subsequent check to that payee passed on insufficient funds.

(2) Notwithstanding any penal sanctions that may apply, any person who passes a check on insufficient funds shall be liable to the payee for damages equal to treble the amount of the check if a written demand for payment is mailed by certified mail to the person who had passed a check on insufficient funds and the written demand informs this person of (A) the provisions of this section, (B) the amount of the check, and (C) the amount of the service charge payable to the payee. The person who had passed a check on insufficient funds shall have 30 days from the date the written demand was mailed to pay the amount of the check, the amount of the service charge payable to the payee, and the costs to mail the written demand for payment. If this person fails to pay in full the amount of the check, the service charge payable to the payee, and the costs to mail the written demand within this period, this person shall then be liable instead for the amount of the check, minus any partial payments made toward the amount of the check or the service charge within 30 days of the written demand, and damages equal to treble that amount, which shall not be less than one hundred dollars ($100) nor more than one thousand five hundred dollars ($1,500). When a person becomes liable for treble damages for a check that is the subject of a written demand, that person shall no longer be liable for any service charge for that check and any costs to mail the written demand.

(3) Notwithstanding paragraphs (1) and (2), a person shall not be liable for the service charge, costs to mail the written demand, or treble damages if he or she stops payment in order to resolve a good faith dispute with the payee. The payee is entitled to the service charge, costs to mail the written demand, or treble damages only

upon proving by clear and convincing evidence that there was no good faith dispute, as defined in subdivision (b).

(4) Notwithstanding paragraph (1), a person shall not be liable under that paragraph for the service charge if, at any time, he or she presents the payee with written confirmation by his or her financial institution that the check was returned to the payee by the financial institution due to an error on the part of the financial institution.

(5) Notwithstanding paragraph (1), a person shall not be liable under that paragraph for the service charge if the person presents the payee with written confirmation that his or her account had insufficient funds as a result of a delay in the regularly scheduled transfer of, or the posting of, a direct deposit of a social security or government benefit assistance payment.

(6) As used in this subdivision, to "pass a check on insufficient funds" means to make, utter, draw, or deliver any check, draft, or order for the payment of money upon any bank, depository, person, firm, or corporation that refuses to honor the check, draft, or order for any of the following reasons:

(A) Lack of funds or credit in the account to pay the check.

(B) The person who wrote the check does not have an account with the drawee.

(C) The person who wrote the check instructed the drawee to stop payment on the check.

(b) For purposes of this section, in the case of a stop payment, the existence of a "good faith dispute" shall be determined by the trier of fact. A "good faith dispute" is one in which the court finds that the drawer had a reasonable belief of his or her legal entitlement to withhold payment. Grounds for the entitlement include, but are not limited to, the following: services were not rendered, goods were not delivered, goods or services purchased are faulty, not as promised, or otherwise unsatisfactory, or there was an overcharge.

(c) In the case of a stop payment, the notice to the drawer required by this section shall be in substantially the following form:

NOTICE

To: _____
(name of drawer)

_____ is the payee of a check you wrote
(name of payee)

for $ _____. The check was not paid because
(amount)

you stopped payment, and the payee demands payment. You may have a good faith dispute as to whether you owe the full amount. If you do not have a good faith dispute with the payee and fail to pay the payee the full amount of the check in cash, a service charge of an amount not to exceed twenty−five dollars ($25) for the first check passed on insufficient funds and an amount not to exceed thirty−five dollars ($35) for each subsequent check passed on insufficient funds, and the costs to mail this notice within 30 days after this notice was mailed, you could be sued and held responsible to pay at least both of the following:

(1) The amount of the check.

(2) Damages of at least one hundred dollars ($100) or, if higher, three times the amount of the check up to one thousand five hundred dollars ($1,500).

If the court determines that you do have a good faith dispute with the payee, you will not have to pay the service charge, treble damages, or mailing cost. If you stopped payment because you have a good faith dispute with the payee, you should try to work out your dispute with the payee. You can contact the payee at:

_____

(name of payee)

_____

(street address)

_____

(telephone number)

You may wish to contact a lawyer to discuss your legal rights and responsibilities.

_____

(name of sender of notice)

(d) In the case of a stop payment, a court may not award damages or costs under this section unless the court receives into evidence a copy of the written demand that, in that case, shall have been sent to the drawer and a signed certified mail receipt showing delivery, or attempted delivery if refused, of the written demand to the drawer's last known address.

(e) A cause of action under this section may be brought in small claims court by the original payee, if it does not exceed the jurisdiction of that court, or in any other appropriate court. The payee shall, in order to recover damages because the drawer instructed the drawee to stop payment, show to the satisfaction of the trier of fact that there was a reasonable effort on the part of the payee to reconcile and resolve the dispute prior to pursuing the dispute through the courts.

(f) A cause of action under this section may be brought by a holder of the check or an assignee of the payee. A proceeding under this section is a limited civil case. However, if the assignee is acting on behalf of the payee, for a flat fee or a percentage fee, the assignee may not charge the payee a greater flat fee or percentage fee for that portion of the amount collected that represents treble damages than is charged the payee for collecting the face amount of the check, draft, or order. This subdivision shall not apply to an action brought in small claims court.

(g) Notwithstanding subdivision (a), if the payee is the court, the written demand for payment described in subdivision (a) may be mailed to the drawer by the court clerk. Notwithstanding subdivision (d), in the case of a stop payment where the demand is mailed by the court clerk, a court may not award damages or costs pursuant to subdivision (d), unless the court receives into evidence a copy of the written demand, and a certificate of mailing by the court clerk in the form provided for in subdivision (4) of Section 1013a of the Code of Civil Procedure for service in civil actions. For purposes of this subdivision, in courts where a single court clerk serves more than one court, the clerk shall be deemed the court clerk of each court.

(h) The requirements of this section in regard to remedies are mandatory upon a court.

(i) The assignee of the payee or a holder of the check may demand, recover, or enforce the service charge, damages, and costs specified in this section to the same extent as the original payee.

(j) (1) A drawer is liable for damages and costs only if all of the requirements of this section have been satisfied.

(2) The drawer shall in no event be liable more than once under this section on each check for a service charge, damages, or costs.

(k) Nothing in this section is intended to condition, curtail, or otherwise prejudice the rights, claims, remedies, and defenses under Division 3 (commencing with Section 3101) of the Commercial Code of a drawer, payee, assignee, or holder, including a holder in due course as defined in Section 3302 of the Commercial Code, in connection with the enforcement of this section.

SEC. 15. Section 1780 of the Civil Code is amended to read:

1780. (a) Any consumer who suffers any damage as a result of the use or employment by any person of a method, act, or practice declared to be unlawful by Section 1770 may bring an action against that person to recover or obtain any of the following:

(1) Actual damages, but in no case shall the total award of damages in a class action be less than one thousand dollars ($1,000).

(2) An order enjoining the methods, acts, or practices.

(3) Restitution of property.

(4) Punitive damages.

(5) Any other relief that the court deems proper.

(b) Any consumer who is a senior citizen or a disabled person, as defined in subdivisions (f) and (g) of Section 1761, as part of an action

under subdivision (a), may seek and be awarded, in addition to the remedies specified therein, up to five thousand dollars ($5,000) where the trier of fact (1) finds that the consumer has suffered substantial physical, emotional, or economic damage resulting from the defendant's conduct, (2) makes an affirmative finding in regard to one or more of the factors set forth in subdivision (b) of Section 3345, and (3) finds that an additional award is appropriate. Judgment in a class action by senior citizens or disabled persons under Section 1781 may award each class member such an additional award where the trier of fact has made the foregoing findings.

(c) An action under subdivision (a) or (b) may be commenced in the county in which the person against whom it is brought resides, has his or her principal place of business, or is doing business, or in the county where the transaction or any substantial portion thereof occurred.

If within the county there is a municipal court, having jurisdiction of the subject matter, established in the city and county or judicial district in which the person against whom the action is brought resides, has his or her principal place of business, or is doing business, or in which the transaction or any substantial portion thereof occurred, then that court is the proper court for the trial of the action. Otherwise, any court in the county having jurisdiction of the subject matter is the proper court for the trial thereof.

In any action subject to the provisions of this section, concurrently with the filing of the complaint, the plaintiff shall file an affidavit stating facts showing that the action has been commenced in a county or judicial district described in this section as a proper place for the trial of the action. If a plaintiff fails to file the affidavit required by this section, the court shall, upon its own motion or upon motion of any party, dismiss the action without prejudice.

(d) The court shall award court costs and attorney's fees to a prevailing plaintiff in litigation filed pursuant to this section. Reasonable attorney's fees may be awarded to a prevailing defendant upon a finding by the court that the plaintiff's prosecution of the action was not in good faith.

SEC. 16. Section 1812.10 of the Civil Code is amended to read:

1812.10. An action on a contract or installment account under the provisions of this chapter shall be tried in the county in which the contract was in fact signed by the buyer, in the county in which the buyer resided at the time the contract was entered into, in the county in which the buyer resides at the commencement of the action, or in the county in which the goods purchased pursuant to the contract have been so affixed to real property as to become a part of that real property.

If within the county there is a municipal court, having jurisdiction of the subject matter, established in the city and county or judicial district in which the contract was in fact signed by the buyer, or in which the buyer resided at the time the contract was entered into,

or in which the buyer resides at the commencement of the action or in which the goods purchased pursuant to the contract have been so affixed to real property as to become a part of that real property, then that court is the proper court for the trial of the action. Otherwise, any court in the county, having jurisdiction of the subject matter, is the proper court for the trial thereof.

In any action subject to the provisions of this section, concurrently with the filing of the complaint, the plaintiff shall file an affidavit stating facts showing that the action has been commenced in a county or judicial district described in this section as a proper place for the trial of the action. Those facts may be stated in a verified complaint and shall not be stated on information or belief. When that affidavit is filed with the complaint, a copy thereof shall be served with the summons. If a plaintiff fails to file the affidavit or state facts in a verified complaint required by this section, no further proceedings shall be had, but the court shall, upon its own motion or upon motion of any party, dismiss the action without prejudice; however, the court may, on such terms as may be just, permit the affidavit to be filed subsequent to the filing of the complaint and a copy of the affidavit shall be served on the defendant. The time to answer or otherwise plead shall date from that service.

SEC. 17. Section 2984.4 of the Civil Code is amended to read:

2984.4. An action on a contract or purchase order under the provisions of this chapter shall be tried in the county in which the contract or purchase order was in fact signed by the buyer, in the county in which the buyer resided at the time the contract or purchase order was entered into, in the county in which the buyer resides at the commencement of the action or in the county in which the motor vehicle purchased pursuant to the contract or purchase order is permanently garaged.

In any action involving multiple claims, or causes of action, venue shall lie in such counties so long as there is at least one claim or cause of action arising from a contract subject to the provisions of this chapter.

If within the county there is a municipal court, having jurisdiction of the subject matter, established in the judicial district in which the contract, conditional sale contract, or purchase order was in fact signed by the buyer, or in which the buyer resided at the time the contract, conditional sale contract, or purchase order was entered into, or in which the buyer resides at the commencement of the action, or in which the motor vehicle purchased pursuant to the contract is permanently garaged, that court is the proper court for the trial of the action. Otherwise, any court in the county, having jurisdiction of the subject matter, is the proper court for the trial of the action.

In any action subject to the provisions of this section, concurrently with the filing of the complaint, the plaintiff shall file an affidavit stating facts showing that the action has been commenced in a county

or judicial district described in this section as a proper place for the trial of the action. Those facts may be stated in a verified complaint and shall not be stated on information or belief. When that affidavit is filed with the complaint, a copy thereof shall be served with the summons. If a plaintiff fails to file the affidavit or state facts in a verified complaint required by this section, no further proceedings shall be had, but the court shall, upon its own motion or upon motion of any party, dismiss the action without prejudice; however, the court may, on such terms as may be just, permit the affidavit to be filed subsequent to the filing of the complaint and a copy of the affidavit shall be served on the defendant. The time to answer or otherwise plead shall date from that service.

SEC. 18. Section 3342.5 of the Civil Code is amended to read:

3342.5. (a) The owner of any dog that has bitten a human being shall have the duty to take such reasonable steps as are necessary to remove any danger presented to other persons from bites by the animal.

(b) Whenever a dog has bitten a human being on at least two separate occasions, any person, the district attorney, or city attorney may bring an action against the owner of the animal to determine whether conditions of the treatment or confinement of the dog or other circumstances existing at the time of the bites have been changed so as to remove the danger to other persons presented by the animal. This action shall be brought in the county where a bite occurred. The court, after hearing, may make any order it deems appropriate to prevent the recurrence of such an incident, including, but not limited to, the removal of the animal from the area or its destruction if necessary.

(c) Whenever a dog trained to fight, attack, or kill has bitten a human being, causing substantial physical injury, any person, including the district attorney, or city attorney may bring an action against the owner of the animal to determine whether conditions of the treatment or confinement of the dog or other circumstances existing at the time of the bites have been changed so as to remove the danger to other persons presented by the animal. This action shall be brought in the county where a bite occurred. The court, after hearing, may make any order it deems appropriate to prevent the recurrence of such an incident, including, but not limited to, the removal of the animal from the area or its destruction if necessary.

(d) Nothing in this section shall authorize the bringing of an action pursuant to subdivision (b) based on a bite or bites inflicted upon a trespasser, or by a dog used in military or police work if the bite or bites occurred while the dog was actually performing in that capacity.

(e) Nothing in this section shall be construed to prevent legislation in the field of dog control by any city, county, or city and county.

(f) Nothing in this section shall be construed to affect the liability of the owner of a dog under Section 3342 or any other provision of the law.

(g) A proceeding under this section is a limited civil case.

SEC. 19. Section 32.5 is added to the Code of Civil Procedure, to read:

32.5. The "jurisdictional classification" of a case means its classification as a limited civil case or otherwise.

SEC. 20. Section 38 is added to the Code of Civil Procedure, to read:

38. Unless the provision or context otherwise requires, a reference in a statute to a judicial district means:

(a) As it relates to a court of appeal, the court of appeal district.

(b) As it relates to a superior court, the county.

(c) As it relates to a municipal court, the municipal court district.

(d) As it relates to a county in which there is no municipal court, the county.

SEC. 21. Section 77 of the Code of Civil Procedure is amended to read:

77. (a) In every county and city and county, there is an appellate division of the superior court consisting of three judges or, when the Chief Justice finds it necessary, four judges. The Chief Justice shall assign judges to the appellate division for specified terms pursuant to rules, not inconsistent with statute, adopted by the Judicial Council to promote the independence and quality of each appellate division. Each judge assigned to the appellate division of a superior court shall be a judge of that court, a judge of the superior court of another county, or a judge retired from the superior court or a court of higher jurisdiction in this state. The Chief Justice shall designate one of the judges of each appellate division as the presiding judge of the division.

(b) In each appellate division, no more than three judges shall participate in a hearing or decision. The presiding judge of the division shall designate the three judges who shall participate.

(c) In addition to their other duties, the judges designated as members of the appellate division of the superior court shall serve for the period specified in the order of designation. Whenever a judge is designated to serve in the appellate division of the superior court of a county other than the county in which that judge was elected or appointed as a superior court judge, or if the judge is retired, in a county other than the county in which the judge resides, the judge shall receive from the county to which the judge is designated expenses for travel, board, and lodging. If the judge is out of the judge's county overnight or longer, by reason of the designation, that judge shall be paid a per diem allowance in lieu of expenses for board and lodging in the same amounts as are payable for those purposes to justices of the Supreme Court under the rules of the State Board of Control. In addition, a retired judge shall receive from the state

and the county to which the judge is designated, for the time so served, amounts equal to that which the judge would have received from each if the judge had been assigned to the superior court of the county.

(d) The concurrence of two judges of the appellate division of the superior court shall be necessary to render the decision in every case in, and to transact any other business except such as may be done at chambers by the presiding judge of, the division. The presiding judge shall convene the division as necessary. The presiding judge shall also supervise its business and transact such thereof as may be done at chambers.

(e) The appellate division of the superior court has jurisdiction on appeal from the following courts, in all cases in which an appeal may be taken to the superior court or the appellate division of the superior court as provided by law, except where the appeal is a retrial in the superior court:

(1) The municipal courts within the county.

(2) The superior court in a county in which there is no municipal court.

(f) The powers of each appellate division shall be the same as are now or may hereafter be provided by law or rule of the Judicial Council relating to appeals to the appellate division of the superior courts.

(g) The Judicial Council shall promulgate rules, not inconsistent with law, to promote the independence of, and govern the practice and procedure and the disposition of the business of, the appellate division.

(h) A reference in any other statute to the appellate department of the superior court means the appellate division of the superior court.

SEC. 21.5. Section 77 of the Code of Civil Procedure is amended to read:

77. (a) In every county and city and county, there is an appellate division of the superior court consisting of three judges or, when the Chief Justice finds it necessary, four judges.

The Chief Justice shall assign judges to the appellate division for specified terms pursuant to rules, not inconsistent with statute, adopted by the Judicial Council to promote the independence and quality of each appellate division. Each judge assigned to the appellate division of a superior court shall be a judge of that court, a judge of the superior court of another county or a judge retired from the superior court or court of higher jurisdiction in this state.

The Chief Justice shall designate one of the judges of each appellate division as the presiding judge of the division.

(b) In each appellate division, no more than three judges shall participate in a hearing or decision. The presiding judge of the division shall designate the three judges who shall participate.

(c) In addition to their other duties, the judges designated as members of the appellate division of the superior court shall serve for the period specified in the order of designation. Whenever a judge is designated to serve in the appellate division of the superior court of a county other than the county in which that judge was elected or appointed as a superior court judge, or if the judge is retired, in a county other than the county in which the judge resides, the judge shall receive from the county to which the judge is designated expenses for travel, board, and lodging. If the judge is out of the judge's county overnight or longer, by reason of the designation, that judge shall be paid a per diem allowance in lieu of expenses for board and lodging in the same amounts as are payable for those purposes to justices of the Supreme Court under the rules of the State Board of Control. In addition, a retired judge shall receive from the state and the county to which the judge is designated, for the time so served, amounts equal to that which the judge would have received from each if the judge had been assigned to the superior court of the county.

(d) The concurrence of two judges of the appellate division of the superior court shall be necessary to render the decision in every case in, and to transact any other business except business that may be done at chambers by the presiding judge of, the division. The presiding judge shall convene the division as necessary. The presiding judge shall also supervise its business and transact any business that may be done at chambers.

(e) The appellate division of the superior court has jurisdiction on appeal from the following courts, in all cases in which an appeal may be taken to the superior court or the appellate division of the superior court as provided by law, except where the appeal is a retrial in the superior court:

(1) The municipal courts within the county.

(2) The superior court in a county in which there is no municipal court.

(f) The powers of each appellate division shall be the same as are now or may hereafter be provided by law or rule of the Judicial Council relating to appeals to the appellate division of the superior courts.

(g) The Judicial Council shall promulgate rules, not inconsistent with law, to promote the independence of, and govern the practice and procedure and the disposition of the business of, the appellate division.

(h) A reference in any other statute to the appellate department of the superior court means the appellate division of the superior court.

(i) Notwithstanding any other provision of law, the chief justice may designate any municipal court judge as a member of the appellate division of the superior court if the municipal court is participating in a trial court coordination plan approved by the

Judicial Council and the designated municipal court judge has been assigned to the superior court of the county by the chief justice.

SEC. 22. The heading of Chapter 5 (commencing with Section 81) of Title 1 of Part 1 of the Code of Civil Procedure is amended to read:

CHAPTER 5. MUNICIPAL COURTS

SEC. 23. The heading of Article 1 (commencing with Section 81) of Chapter 5 of Title 1 of Part 1 of the Code of Civil Procedure is repealed.

SEC. 24. Section 82 of the Code of Civil Procedure is amended to read:

82. The establishment of a municipal court in a county, or city and county, or the determination of the jurisdiction of a municipal court by the Legislature, shall not affect, alter or diminish the previously existing jurisdiction of the superior court of any county, or city and county, other than that of the county, or city and county, wherein such municipal court is established.

SEC. 25. Section 83 of the Code of Civil Procedure is repealed.

SEC. 26. Section 84 of the Code of Civil Procedure is amended to read:

84. The process of municipal courts shall extend throughout the state.

SEC. 27. Section 85 of the Code of Civil Procedure is repealed.

SEC. 28. Chapter 5.1 (commencing with Section 85) is added to Title 1 of Part 1 of the Code of Civil Procedure, to read:

CHAPTER 5.1. LIMITED CIVIL CASES

Article 1. Jurisdiction in Limited Civil Cases

85. An action or special proceeding shall be treated as a limited civil case if all of the following conditions are satisfied, and, notwithstanding any statute that classifies an action or special proceeding as a limited civil case, an action or special proceeding shall not be treated as a limited civil case unless all of the following conditions are satisfied:

(a) The amount in controversy does not exceed twenty-five thousand dollars ($25,000). As used in this section, "amount in controversy" means the amount of the demand, or the recovery sought, or the value of the property, or the amount of the lien, that is in controversy in the action, exclusive of attorneys' fees, interest, and costs.

(b) The relief sought is a type that may be granted in a limited civil case.

(c) The relief sought, whether in the complaint, a cross-complaint, or otherwise, is exclusively of a type described in one or more statutes

that classify an action or special proceeding as a limited civil case or that provide that an action or special proceeding is within the original jurisdiction of the municipal court, including, but not limited to, the following provisions:

(1) Section 798.61 of the Civil Code.
(2) Section 1719 of the Civil Code.
(3) Section 3342.5 of the Civil Code.
(4) Section 86.
(5) Section 86.1.
(6) Section 1710.20.
(7) Section 7581 of the Food and Agricultural Code.
(8) Section 12647 of the Food and Agricultural Code.
(9) Section 27601 of the Food and Agricultural Code.
(10) Section 31503 of the Food and Agricultural Code.
(11) Section 31621 of the Food and Agricultural Code.
(12) Section 52514 of the Food and Agricultural Code.
(13) Section 53564 of the Food and Agricultural Code.
(14) Section 53069.4 of the Government Code.
(15) Section 53075.6 of the Government Code.
(16) Section 53075.61 of the Government Code.
(17) Section 5411.5 of the Public Utilities Code.
(18) Section 9872.1 of the Vehicle Code.
(19) Section 10751 of the Vehicle Code.
(20) Section 14607.6 of the Vehicle Code.
(21) Section 40230 of the Vehicle Code.
(22) Section 40256 of the Vehicle Code.

85.1. Except as otherwise provided by statute, the municipal court, or the superior court in a county in which there is no municipal court, has original jurisdiction in a limited civil case.

SEC. 29. Section 86 of the Code of Civil Procedure is amended to read:

86. (a) The following civil cases and proceedings are limited civil cases:

(1) Cases at law in which the demand, exclusive of interest, or the value of the property in controversy amounts to twenty-five thousand dollars ($25,000) or less. This paragraph does not apply to cases that involve the legality of any tax, impost, assessment, toll, or municipal fine, except actions to enforce payment of delinquent unsecured personal property taxes if the legality of the tax is not contested by the defendant.

(2) Actions for dissolution of partnership where the total assets of the partnership do not exceed twenty-five thousand dollars ($25,000); actions of interpleader where the amount of money or the value of the property involved does not exceed twenty-five thousand dollars ($25,000).

(3) Actions to cancel or rescind a contract when the relief is sought in connection with an action to recover money not exceeding twenty-five thousand dollars ($25,000) or property of a value not

exceeding twenty-five thousand dollars ($25,000), paid or delivered under, or in consideration of, the contract; actions to revise a contract where the relief is sought in an action upon the contract if the action otherwise is a limited civil case.

(4) Proceedings in forcible entry or forcible or unlawful detainer where the whole amount of damages claimed is twenty-five thousand dollars ($25,000) or less.

(5) Actions to enforce and foreclose liens on personal property where the amount of the liens is twenty-five thousand dollars ($25,000) or less.

(6) Actions to enforce and foreclose liens of mechanics, materialmen, artisans, laborers, and of all other persons to whom liens are given under the provisions of Chapter 2 (commencing with Section 3109) of Title 15 of Part 4 of Division 3 of the Civil Code, or to enforce and foreclose an assessment lien on a common interest development as defined in Section 1351 of the Civil Code, where the amount of the liens is twenty-five thousand dollars ($25,000) or less. However, where an action to enforce the lien affects property that is also affected by a similar pending action that is not a limited civil case, or where the total amount of the liens sought to be foreclosed against the same property aggregates an amount in excess of twenty-five thousand dollars ($25,000), the action is not a limited civil case, and if the action is pending in a municipal court, upon motion of any interested party, the municipal court shall order the action or actions pending therein transferred to the proper superior court. Upon making the order, the same proceedings shall be taken as are provided by Section 399 with respect to the change of place of trial.

(7) Actions for declaratory relief when brought pursuant to either of the following:

(A) By way of cross-complaint as to a right of indemnity with respect to the relief demanded in the complaint or a cross-complaint in an action or proceeding that is otherwise a limited civil case.

(B) To conduct a trial after a nonbinding fee arbitration between an attorney and client, pursuant to Article 13 (commencing with Section 6200) of Chapter 4 of Division 3 of the Business and Professions Code, where the amount in controversy is twenty-five thousand dollars ($25,000) or less.

(8) Actions to issue temporary restraining orders and preliminary injunctions, to take accounts, and to appoint receivers where necessary to preserve the property or rights of any party to a limited civil case; to appoint a receiver and to make any order or perform any act, pursuant to Title 9 (commencing with Section 680.010) of Part 2 (enforcement of judgments) in a limited civil case; to determine title to personal property seized in a limited civil case.

(9) Actions under Article 3 (commencing with Section 708.210) of Chapter 6 of Division 2 of Title 9 of Part 2 for the recovery of an interest in personal property or to enforce the liability of the debtor of a judgment debtor where the interest claimed adversely is of a

value not exceeding twenty-five thousand dollars ($25,000) or the debt denied does not exceed twenty-five thousand dollars ($25,000).

(10) Arbitration-related petitions filed pursuant to either of the following:

(A) Article 2 (commencing with Section 1292) of Chapter 5 of Title 9 of Part 3, except for uninsured motorist arbitration proceedings in accordance with Section 11580.2 of the Insurance Code, if the petition is filed before the arbitration award becomes final and the matter to be resolved by arbitration is a limited civil case under paragraphs (1) to (9), inclusive, of subdivision (a) or if the petition is filed after the arbitration award becomes final and the amount of the award and all other rulings, pronouncements, and decisions made in the award are within paragraphs (1) to (9), inclusive, of subdivision (a).

(B) To confirm, correct, or vacate a fee arbitration award between an attorney and client that is binding or has become binding, pursuant to Article 13 (commencing with Section 6200) of Chapter 4 of Division 3 of the Business and Professions Code, where the arbitration award is twenty-five thousand dollars ($25,000) or less.

(b) The following cases in equity are limited civil cases:

(1) Cases to try title to personal property when the amount involved is not more than twenty-five thousand dollars ($25,000).

(2) Cases when equity is pleaded as a defensive matter in any case that is otherwise a limited civil case.

(3) Cases to vacate a judgment or order of the court obtained in a limited civil case through extrinsic fraud, mistake, inadvertence, or excusable neglect.

SEC. 30. Section 86.1 of the Code of Civil Procedure is amended to read:

86.1. An action brought pursuant to the Long-Term Care, Health, Safety, and Security Act of 1973 (Chapter 2.4 (commencing with Section 1417) of Division 2 of the Health and Safety Code) is a limited civil case if civil penalties are not sought or amount to twenty-five thousand dollars ($25,000) or less. An action brought in a municipal court may be transferred to the superior court for consolidation with any other citation enforcement action pending in that court, on the motion of either party.

SEC. 31. Section 87 of the Code of Civil Procedure is repealed.

SEC. 32. Section 88 of the Code of Civil Procedure is repealed.

SEC. 33. Section 89 of the Code of Civil Procedure is repealed.

SEC. 34. The heading of Article 2 (commencing with Section 90) of Chapter 5 of Title 1 of Part 1 of the Code of Civil Procedure is repealed.

SEC. 35. A heading is added to Article 2 (commencing with Section 90) of Chapter 5.1 of Title 1 of Part 1 of the Code of Civil Procedure, to read:

Article 2. Economic Litigation for Limited Civil Cases

SEC. 36. Section 91 of the Code of Civil Procedure is amended to read:

91. (a) Except as otherwise provided in this section, the provisions of this article apply to every limited civil case.

(b) The provisions of this article do not apply to any action under Chapter 5.5 (commencing with Section 116.110) or any proceeding under Chapter 4 (commencing with Section 1159) of Title 3 of Part 3.

(c) Any action may, upon noticed motion, be withdrawn from the provisions of this article, upon a showing that it is impractical to prosecute or defend the action within the limitations of these provisions.

SEC. 37. Section 116.120 of the Code of Civil Procedure is amended to read:

116.120. The Legislature hereby finds and declares as follows:

(a) Individual minor civil disputes are of special importance to the parties and of significant social and economic consequence collectively.

(b) In order to resolve minor civil disputes expeditiously, inexpensively, and fairly, it is essential to provide a judicial forum accessible to all parties directly involved in resolving these disputes.

(c) The small claims divisions have been established to provide a forum to resolve minor civil disputes, and for that reason constitute a fundamental element in the administration of justice and the protection of the rights and property of individuals.

(d) The small claims divisions, the provisions of this chapter, and the rules of the Judicial Council regarding small claims actions shall operate to ensure that the convenience of parties and witnesses who are individuals shall prevail, to the extent possible, over the convenience of any other parties or witnesses.

SEC. 38. Section 116.210 of the Code of Civil Procedure is amended to read:

116.210. In each municipal court and each superior court in a county in which there is no municipal court, there shall be a small claims division. The small claims division may be known as the small claims court.

SEC. 39. Section 116.231 of the Code of Civil Procedure is amended to read:

116.231. (a) Except as provided in subdivision (d), no person may file more than two small claims actions in which the amount demanded exceeds two thousand five hundred dollars ($2,500), anywhere in the state in any calendar year.

(b) Except as provided in subdivision (d), if the amount demanded in any small claims action exceeds two thousand five hundred dollars ($2,500), the party making the demand shall file a declaration under penalty of perjury attesting to the fact that not

more than two small claims actions in which the amount of the demand exceeded two thousand five hundred dollars ($2,500) have been filed by that party in this state within the calendar year.

(c) The Legislature finds and declares that the pilot project conducted under the authority of Chapter 1196 of the Statutes of 1991 demonstrated the efficacy of the removal of the limitation on the number of actions public entities may file in the small claims courts on claims exceeding two thousand five hundred dollars ($2,500).

(d) The limitation on the number of filings exceeding two thousand five hundred dollars ($2,500) does not apply to filings where the claim does not exceed five thousand dollars ($5,000) that are filed by a city, county, city and county, school district, county office of education, community college district, local district, or any other local public entity. If any small claims action is filed by a city, county, city and county, school district, county office of education, community college district, local district, or any other local public entity pursuant to this section, and the defendant informs the court either in advance of the hearing by written notice or at the time of the hearing, that he or she is represented in the action by legal counsel, the action shall be transferred out of the small claims division. A city, county, city and county, school district, county office of education, community college district, local district, or any other local public entity may not file a claim within the small claims division if the amount of the demand exceeds five thousand dollars ($5,000).

SEC. 40. Section 116.250 of the Code of Civil Procedure is amended to read:

116.250. (a) Sessions of the small claims court may be scheduled at any time and on any day, including Saturdays, but excluding other judicial holidays. They may also be scheduled at any public building within the judicial district, including places outside the courthouse.

(b) Each small claims division of a municipal court with four or more judicial officers, and each small claims division of a superior court with seven or more judicial officers, shall conduct at least one night session or Saturday session each month for the purpose of hearing small claims cases other than small claims appeals. The term "session" includes, but is not limited to, a proceeding conducted by a member of the State Bar acting as a mediator or referee.

SEC. 41. Section 116.760 of the Code of Civil Procedure is amended to read:

116.760. (a) The appealing party shall pay the same superior court filing fee that is required for an appeal of a limited civil case.

(b) A party who does not appeal shall not be charged any fee for filing any document relating to the appeal.

SEC. 42. Section 116.770 of the Code of Civil Procedure is amended to read:

116.770. (a) The appeal to the superior court shall consist of a new hearing before a judicial officer other than the judicial officer who heard the action in the small claims division.

(b) The hearing on an appeal to the superior court shall be conducted informally. The pretrial discovery procedures described in subdivision (a) of Section 2019 are not permitted, no party has a right to a trial by jury, and no tentative decision or statement of decision is required.

(c) Article 5 (commencing with Section 116.510) on hearings in the small claims court applies in hearings on appeal in the superior court, except that attorneys may participate.

(d) The scope of the hearing shall include the claims of all parties who were parties to the small claims action at the time the notice of appeal was filed. The hearing shall include the claim of a defendant that was heard in the small claims court.

(e) The clerk of the superior court shall schedule the hearing for the earliest available time and shall mail written notice of the hearing to the parties at least 14 days prior to the time set for the hearing.

(f) The Judicial Council may prescribe by rule the practice and procedure on appeal and the time and manner in which the record on appeal shall be prepared and filed.

SEC. 43. Section 116.940 of the Code of Civil Procedure is amended to read:

116.940. (a) Except as otherwise provided in this section or in rules adopted by the Judicial Council, the characteristics of the small claims advisory service required by Section 116.260 shall be determined by each county in accordance with local needs and conditions.

(b) Each advisory service shall provide the following services:

(1) Individual personal advisory services, in person or by telephone, and by any other means reasonably calculated to provide timely and appropriate assistance.

(2) Recorded telephone messages may be used to supplement the individual personal advisory services, but shall not be the sole means of providing advice available in the county.

(3) Adjacent counties may provide advisory services jointly.

(c) In any county in which the number of small claims actions filed annually is 1,000 or less as averaged over the immediately preceding two fiscal years, the county may elect to exempt itself from the requirements set forth in subdivision (b). This exemption shall be formally noticed through the adoption of a resolution by the board of supervisors. If a county so exempts itself, the county shall nevertheless provide the following minimum advisory services in accordance with rules adopted by the Judicial Council:

(1) Recorded telephone messages providing general information relating to small claims actions filed in the county shall be provided during regular business hours.

(2) Small claims information booklets shall be provided in the court clerk's office of each municipal court, the court clerk's office of each superior court in a county in which there is no municipal court, the county administrator's office, other appropriate county offices,

and in any other location that is convenient to prospective small claims litigants in the county.

(d) The advisory service shall operate in conjunction and cooperation with the small claims division, and shall be administered so as to avoid the existence or appearance of a conflict of interest between the individuals providing the advisory services and any party to a particular small claims action or any judicial officer deciding small claims actions.

(e) Advisors may be volunteers, and shall be members of the State Bar, law students, paralegals, or persons experienced in resolving minor disputes, and shall be familiar with small claims court rules and procedures. Advisors shall not appear in court as an advocate for any party.

(f) Advisors and other court employees and volunteers have the immunity conferred by Section 818.9 of the Government Code with respect to advice provided under this chapter.

SEC. 44. Section 116.950 of the Code of Civil Procedure is amended to read:

116.950. (a) This section shall become operative only if the Department of Consumer Affairs determines that sufficient private or public funds are available in addition to the funds available in the department's current budget to cover the costs of implementing this section.

(b) There shall be established an advisory committee, constituted as set forth in this section, to study small claims practice and procedure, with particular attention given to the improvement of procedures for the enforcement of judgments.

(c) The members of the advisory committee shall serve without compensation, but shall be reimbursed for expenses actually and necessarily incurred by them in the performance of their duties. The advisory committee shall report its findings and recommendations to the Judicial Council and the Legislature.

(d) The advisory committee shall be composed as follows:

(1) The Attorney General or a representative.

(2) Two consumer representatives from consumer groups or agencies, appointed by the Secretary of the State and Consumer Services Agency.

(3) One representative appointed by the Speaker of the Assembly and one representative appointed by the President pro Tempore of the Senate.

(4) Two representatives, appointed by the Board of Governors of the State Bar.

(5) Two representatives of the business community, appointed by the Secretary of the Trade and Commerce Agency.

(6) Six judges of the municipal court, or of the superior court in a county in which there is no municipal court, who have had extensive experience as judges of small claims court, appointed by the Judicial Council.

(7) One representative appointed by the Governor.

(8) Two clerks of the court, appointed by the Judicial Council.

(e) Staff assistance to the advisory committee shall be provided by the Department of Consumer Affairs, with the assistance of the Judicial Council, as needed.

SEC. 45. Section 134 of the Code of Civil Procedure is amended to read:

134. (a) Except as provided in subdivision (c), the courts shall be closed for the transaction of judicial business on judicial holidays for all but the following purposes:

(1) To give, upon their request, instructions to a jury when deliberating on their verdict.

(2) To receive a verdict or discharge a jury.

(3) For the conduct of arraignments and the exercise of the powers of a magistrate in a criminal action, or in a proceeding of a criminal nature.

(4) For the conduct of Saturday small claims court sessions pursuant to the Small Claims Act set forth in Chapter 5.5 (commencing with Section 116.110).

(b) Injunctions and writs of prohibition may be issued and served on any day.

(c) In any superior or municipal court, one or more departments of the court may remain open and in session for the transaction of any business that may come before the department in the exercise of the civil or criminal jurisdiction of the court, or both, on a judicial holiday or at any hours of the day or night, or both, as the judges of the court prescribe.

(d) The fact that a court is open on a judicial holiday shall not make that day a nonholiday for purposes of computing the time required for the conduct of any proceeding nor for the performance of any act. Any paper lodged with the court at a time when the court is open pursuant to subdivision (c), shall be filed by the court on the next day that is not a judicial holiday, if the document meets appropriate criteria for filing.

SEC. 46. Section 166 of the Code of Civil Procedure is amended to read:

166. (a) The judge or judges of the superior and municipal courts may, in chambers, in the matters within the jurisdiction of their respective courts:

(1) Grant all orders and writs that are usually granted in the first instance upon an ex parte application, and hear and dispose of those orders and writs, appoint referees, require and receive inventories and accounts to be filed, order notice of settlement of supplemental accounts, suspend the powers of personal representatives, guardians, or conservators in the cases allowed by law, appoint special administrators, grant letters of temporary guardianship or conservatorship, approve or reject claims, and direct the issuance

from the court of all writs and process necessary in the exercise of their powers in matters of probate.

(2) Hear and determine all motions made pursuant to Section 657 or 663.

(3) Hear and determine all uncontested actions, proceedings, demurrers, motions, petitions, applications, and other matters pending before the court other than actions for dissolution of marriage, for legal separation, or for a judgment of nullity of the marriage, and except also applications for confirmation of sale of real property in probate proceedings.

(4) Hear and determine motions to tax costs of enforcing a judgment.

(5) Approve bonds and undertakings.

(b) A judge may, out of court, anywhere in the state, exercise all the powers and perform all the functions and duties conferred upon a judge as contradistinguished from the court, or that a judge may exercise or perform in chambers.

SEC. 47. Section 170.5 of the Code of Civil Procedure is amended to read:

170.5. For the purposes of Sections 170 to 170.5, inclusive, the following definitions apply:

(a) "Judge" means judges of the municipal and superior courts, and court commissioners and referees.

(b) "Financial interest" means ownership of more than a 1 percent legal or equitable interest in a party, or a legal or equitable interest in a party of a fair market value in excess of one thousand five hundred dollars ($1,500), or a relationship as director, advisor or other active participant in the affairs of a party, except as follows:

(1) Ownership in a mutual or common investment fund that holds securities is not a "financial interest" in those securities unless the judge participates in the management of the fund.

(2) An office in an educational, religious, charitable, fraternal, or civic organization is not a "financial interest" in securities held by the organization.

(3) The proprietary interest of a policyholder in a mutual insurance company, or a depositor in a mutual savings association, or a similar proprietary interest, is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest.

(c) "Officer of a public agency" does not include a Member of the Legislature or a state or local agency official acting in a legislative capacity.

(d) The third degree of relationship shall be calculated according to the civil law system.

(e) "Private practice of law" includes a fee for service, retainer, or salaried representation of private clients or public agencies, but excludes lawyers as full-time employees of public agencies or lawyers working exclusively for legal aid offices, public defender offices, or

similar nonprofit entities whose clientele is by law restricted to the indigent.

(f) "Proceeding" means the action, case, cause, motion, or special proceeding to be tried or heard by the judge.

(g) "Fiduciary" includes any executor, trustee, guardian, or administrator.

SEC. 48. Section 170.7 of the Code of Civil Procedure is amended to read:

170.7. Section 170.6 does not apply to a judge designated or assigned to serve on the appellate division of a superior court in the judge's capacity as a judge of that division.

SEC. 49. Section 179 of the Code of Civil Procedure is amended to read:

179. Each of the justices of the Supreme Court and of any court of appeal and the judges of the superior courts, shall have power in any part of the state, and every municipal court judge shall have power within the county or city and county in which the judge is elected or appointed, to take and certify:

1. The proof and acknowledgment of a conveyance of real property, or of any other written instrument.

2. The acknowledgment of satisfaction of a judgment of any court.

3. An affidavit or deposition to be used in this state.

SEC. 50. Section 194 of the Code of Civil Procedure is amended to read:

194. The following definitions govern the construction of this chapter:

(a) "County" means any county or any coterminous city and county.

(b) "Court" means the superior and municipal courts of this state, and includes, when the context requires, any judge of the court.

(c) "Deferred jurors" are those prospective jurors whose request to reschedule their service to a more convenient time is granted by the jury commissioner.

(d) "Excused jurors" are those prospective jurors who are excused from service by the jury commissioner for valid reasons based on statute, state or local court rules, and policies.

(e) "Juror pool" means the group of prospective qualified jurors appearing for assignment to trial jury panels.

(f) "Jury of inquest" is a body of persons summoned from the citizens before the sheriff, coroner, or other ministerial officers, to inquire of particular facts.

(g) "Master list" means a list of names randomly selected from the source lists.

(h) "Potential juror" means any person whose name appears on a source list.

(i) "Prospective juror" means a juror whose name appears on the master list.

(j) "Qualified juror" means a person who meets the statutory qualifications for jury service.

(k) "Qualified juror list" means a list of qualified jurors.

(*l*) "Random" means that which occurs by mere chance indicating an unplanned sequence of selection where each juror's name has substantially equal probability of being selected.

(m) "Source list" means a list used as a source of potential jurors.

(n) "Summons list" means a list of prospective or qualified jurors who are summoned to appear or to be available for jury service.

(o) "Trial jurors" are those jurors sworn to try and determine by verdict a question of fact.

(p) "Trial jury" means a body of persons selected from the citizens of the area served by the court and sworn to try and determine by verdict a question of fact.

(q) "Trial jury panel" means a group of prospective jurors assigned to a courtroom for the purpose of voir dire.

SEC. 51. Section 195 of the Code of Civil Procedure is amended to read:

195. (a) In each county, there shall be one jury commissioner who shall be appointed by, and serve at the pleasure of, a majority of the judges of the superior court. In any county where there is a superior court administrator or executive officer, that person shall serve as ex officio jury commissioner. The person so appointed shall serve as jury commissioner for all trial courts within the county. In any municipal court district in the county, a majority of the judges may appoint the clerk/administrator to select jurors for their court pursuant to this chapter. In any court jurisdiction where any person other than a court administrator or clerk/administrator is serving as jury commissioner on the effective date of this section, that person shall continue to so serve at the pleasure of a majority or the judges of the appointing court.

(b) Except where the superior court administrator or executive officer serves as ex officio jury commissioner, the jury commissioner's salary shall be set by joint action of the board of supervisors and a majority of the superior court judges. Any jury commissioner may, whenever the business of court requires, and with the consent of the board of supervisors, appoint deputy jury commissioners. Salaries and benefits of those deputies shall be fixed in the same manner as salaries and benefits of other court employees.

(c) The jury commissioner shall be primarily responsible for managing the jury system under the general supervision of the court in conformance with the purpose and scope of this act. He or she shall have authority to establish policies and procedures necessary to fulfill this responsibility.

SEC. 52. Section 198.5 of the Code of Civil Procedure is amended to read:

198.5. (a) Except as provided in subdivision (b), in counties where sessions of the superior court are held in cities other than the

county seat, the names for master jury lists and qualified jury lists to serve in those cities may be selected from the judicial district in which the city is located and, if the judges of the court determine that it is necessary or advisable, from a judicial district adjacent to a judicial district in which the city is located.

(b) In a county in which there is no municipal court, if sessions of the superior court are held in a location other than the county seat, the names for master jury lists and qualified jury lists to serve in a session may be selected from the area in which the session is held, pursuant to a local superior court rule that divides the county in a manner that provides all qualified persons in the county an equal opportunity to be considered for jury service.

SEC. 53. Section 200 of the Code of Civil Procedure is amended to read:

200. Except in Alameda County, when authorized by local superior court rules, a municipal court district pursuant to duly adopted court rule may use the same juror pool as that summoned for use in the superior court. Persons so selected for jury service in those municipal courts need not be residents of the judicial district. In Los Angeles County, the municipal courts shall use the same jury pool as that summoned for use in the superior court.

SEC. 53.5. Section 200 of the Code of Civil Procedure is amended to read:

200. When authorized by local superior court rules, a municipal court district pursuant to duly adopted court rule may use the same juror pool as that summoned for use in the superior court. Persons so selected for jury service in those municipal courts need not be residents of the judicial district. In Los Angeles County, the municipal courts shall use the same jury pool as that summoned for use in the superior court.

SEC. 54. Section 215 of the Code of Civil Procedure is amended to read:

215. (a) Unless a higher fee is provided, for each day's attendance by county or city and county ordinance, the fee for jurors in the superior and municipal courts, in civil and criminal cases, is five dollars ($5) a day for each day's attendance as a juror. Unless a higher rate of mileage is otherwise provided by statute or by county or city and county ordinance, jurors in the superior and municipal courts shall be reimbursed for mileage at the rate of fifteen cents ($0.15) per mile for each mile actually traveled in attending court as a juror, in going only.

(b) In criminal cases, the board of supervisors of each county shall make sufficient appropriations for the payment of the fees provided for in this section.

SEC. 54.5. Section 215 of the Code of Civil Procedure is amended to read:

215. (a) Beginning January 1, 1999, the fee for jurors in the superior and municipal courts, in civil and criminal cases, is ten

dollars ($10) a day for each day's attendance as a juror after the first day.

(b) Unless a higher rate of mileage is otherwise provided by statute or by county or city and county ordinance, jurors in the superior and municipal courts shall be reimbursed for mileage at the rate of fifteen cents ($0.15) per mile for each mile actually traveled in attending court as a juror, in going only.

(c) In civil actions, juror fees and mileage reimbursement shall be recoverable as costs.

SEC. 55. Section 217 of the Code of Civil Procedure is amended to read:

217. In criminal cases only, while the jury is kept together, either during the progress of the trial or after their retirement for deliberation, the court may direct the sheriff or marshal to provide the jury with suitable and sufficient food and lodging, or other reasonable necessities. In the superior and municipal courts, the expenses incurred under the provisions of this section shall be charged against the county or city and county in which the court is held. All those expenses shall be paid on the order of the court.

SEC. 56. Section 234 of the Code of Civil Procedure is amended to read:

234. Whenever, in the opinion of a judge of a superior or municipal court about to try a civil or criminal action or proceeding, the trial is likely to be a protracted one, or upon stipulation of the parties, the court may cause an entry to that effect to be made in the minutes of the court and thereupon, immediately after the jury is impaneled and sworn, the court may direct the calling of one or more additional jurors, in its discretion, to be known as "alternate jurors."

These alternate jurors shall be drawn from the same source, and in the same manner, and have the same qualifications, as the jurors already sworn, and shall be subject to the same examination and challenges. However, each side, or each defendant, as provided in Section 231, shall be entitled to as many peremptory challenges to the alternate jurors as there are alternate jurors called.

The alternate jurors shall be seated so as to have equal power and facilities for seeing and hearing the proceedings in the case, and shall take the same oath as the jurors already selected, and shall, unless excused by the court, attend at all times upon the trial of the cause in company with the other jurors, but shall not participate in deliberation unless ordered by the court, and for a failure to do so are liable to be punished for contempt.

They shall obey the orders of and be bound by the admonition of the court, upon each adjournment of the court; but if the regular jurors are ordered to be kept in the custody of the sheriff or marshal during the trial of the cause, the alternate jurors shall also be kept in confinement with the other jurors; and upon final submission of the case to the jury, the alternate jurors shall be kept in the custody of the sheriff or marshal who shall not suffer any communication to be made

to them except by order of the court, and shall not be discharged until the original jurors are discharged, except as provided in this section.

If at any time, whether before or after the final submission of the case to the jury, a juror dies or becomes ill, or upon other good cause shown to the court is found to be unable to perform his or her duty, or if a juror requests a discharge and good cause appears therefor, the court may order the juror to be discharged and draw the name of an alternate, who shall then take his or her place in the jury box, and be subject to the same rules and regulations as though he or she has been selected as one of the original jurors.

All laws relative to fees, expenses, and mileage or transportation of jurors shall be applicable to alternate jurors, except that in civil cases the sums for fees and mileage or transportation need not be deposited until the judge directs alternate jurors to be impaneled.

SEC. 57. Section 269 of the Code of Civil Procedure is amended to read:

269. (a) The official reporter of a superior court, or any of them, where there are two or more, shall, at the request of either party, or of the court in a civil case other than a limited civil case, and on the order of the court, the district attorney, or the attorney for the defendant in a felony case, take down in shorthand all testimony, objections made, rulings of the court, exceptions taken, all arraignments, pleas, and sentences of defendants in felony cases, arguments of the prosecuting attorney to the jury, and all statements and remarks made and oral instructions given by the judge. If directed by the court, or requested by either party, the official reporter shall, within such reasonable time after the trial of the case as the court may designate, write the transcripts out, or the specific portions thereof as may be requested, in plain and legible longhand, or by typewriter, or other printing machine, and certify that the transcripts were correctly reported and transcribed, and when directed by the court, file the transcripts with the clerk of the court.

(b) In any case where a defendant is convicted of a felony, after a trial on the merits, the record on appeal shall be prepared immediately after the verdict or finding of guilt is announced unless the court determines that it is likely that no appeal from the decision will be made. The court's determination of a likelihood of appeal shall be based upon standards and rules adopted by the Judicial Council.

(c) Any court, party, or person may request delivery of any transcript in a computer-readable form, except that an original transcript shall be on paper. A copy of the original transcript ordered within 120 days of the filing or delivery of the transcript by the official reporter shall be delivered in computer-readable form upon request if the proceedings were produced utilizing computer-aided transcription equipment. Except as modified by standards adopted by the Judicial Council, the computer-readable transcript shall be on disks in standard ASCII code unless otherwise agreed by the reporter and the court, party, or person requesting the transcript. Each disk

shall be labeled with the case name and court number, the dates of proceedings contained on the disk, and the page and volume numbers of the data contained on the disk. Each disk as produced by the court reporter shall contain the identical volume divisions, pagination, line numbering, and text of the certified original paper transcript or any portion thereof. Each disk shall be sequentially numbered within the series of disks.

SEC. 58. Section 274a of the Code of Civil Procedure is amended to read:

274a. Any judge of the superior court may have any opinion given or rendered by the judge in the trial of a felony case or a civil case other than a limited civil case, pending in that court, or any necessary order, petition, citation, commitment or judgment in any probate proceeding, proceeding concerning new or additional bonds of county officials or juvenile court proceeding, or necessary order, petition, citation, commitment, or oral testimony or judgment in any insanity proceeding or proceedings relative to an alleged feebleminded person, or the testimony or judgment relating to the custody or support of minor children in any proceeding in which the custody or support of minor children is involved, taken down in shorthand and transcribed together with such copies as the court may deem necessary by the official reporter of the court, but if there be no official reporter for the court, then by any competent stenographer; the cost thereof shall be a legal charge against the county, payable out of the county treasury, except the fee for reporting and transcribing in any civil action or proceeding or in any probate proceeding, in the manner set forth in Sections 69947 to 69953, inclusive, of the Government Code.

SEC. 59. Section 274c of the Code of Civil Procedure is amended to read:

274c. Official reporters shall, at the request of either party or of the court in a limited civil case, or on the order of the court in a misdemeanor or infraction case, take down in shorthand all the testimony, the objections made, the rulings of the court, the exceptions taken, all arraignments, pleas and sentences of defendants in criminal cases, the arguments of the prosecuting attorney to the jury, and all statements and remarks made and oral instructions given by the judge; and if directed by the court, or requested by either party, must, within such reasonable time after the trial of the case as the court may designate, write out the same, or such specific portions thereof as may be requested, in plain and legible longhand, or by typewriter, or other printing machine, and certify to the same as being correctly reported and transcribed, and when directed by the court, file the same with the clerk of the court.

SEC. 60. Section 392 of the Code of Civil Procedure is amended to read:

392. (1) Subject to the power of the court to transfer actions and proceedings as provided in this title, the county in which the real

property, that is the subject of the action, or some part thereof, is situated, is the proper county for the trial of the following actions:

(a) For the recovery of real property, or of an estate or interest therein, or for the determination in any form, of that right or interest, and for injuries to real property;

(b) For the foreclosure of all liens and mortgages on real property.

(2) The proper court for the trial of any such action, in the county hereinabove designated as the proper county, shall be determined as follows:

If there is a municipal court, having jurisdiction of the subject matter of the action, established in the city and county or judicial district in which the real property that is the subject of the action, or some part thereof, is situated, that court is the proper court for the trial of the action; otherwise any court in the county having jurisdiction of the subject matter of the action, is a proper court for the trial thereof.

SEC. 61. Section 393 of the Code of Civil Procedure is amended to read:

393. (1) Subject to the power of the court to transfer actions and proceedings as provided in this title, the county in which the cause, or some part thereof, arose, is the proper county for the trial of the following actions:

(a) For the recovery of a penalty or forfeiture imposed by statute; except, that when it is imposed for an offense committed on a lake, river, or other stream of water, situated in two or more counties, the action may be tried in any county bordering on the lake, river, or stream, and opposite to the place where the offense was committed;

(b) Against a public officer or person especially appointed to execute the duties of a public officer, for an act done by the officer or person in virtue of the office; or against a person who, by the officer's command or in the officer's aid, does anything touching the duties of the officer.

(2) The proper court for the trial of any such action, in the county hereinabove designated as the proper county, shall be determined as follows:

If there is a municipal court having jurisdiction of the subject matter of the action, established in the city and county or judicial district in which the cause, or some part thereof, arose, that court is the proper court for the trial of the action; otherwise, any court in the county, having jurisdiction of the subject matter of the action, is a proper court for the trial thereof. In the case of offenses committed on a lake, river, or stream, hereinabove mentioned, the court, having jurisdiction of the subject matter of the action, nearest to the place where the offense was committed, in any county mentioned in subdivision 1 of this section, is a proper court for the trial of the action.

SEC. 62. 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 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 that 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 an unsolicited telephone call made by a seller

engaged in the business of consummating transactions of that kind, 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 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 in 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 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. 62.5. 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 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 that 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 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 in 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 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. 63. Section 395.9 is added to the Code of Civil Procedure, to read:

395.9. (a) In a county in which there is no municipal court, if the caption of the complaint, cross-complaint, petition, or other initial pleading erroneously states or fails to state, pursuant to Section 422.30, that the action or proceeding is a limited civil case, the action or proceeding shall not be dismissed, except as provided in Section 399.5 or paragraph (1) of subdivision (b) of Section 581, but shall, on the motion of the defendant or cross-defendant within the time allowed for that party to respond to the initial pleading, or on the court's own motion at any time, be reclassified as a limited civil case or otherwise. The action or proceeding shall then be prosecuted as if it had been so commenced, all prior proceedings being saved. A motion for reclassification shall not extend the moving party's time to answer or otherwise respond.

(b) If it appears from the verified pleadings, or at the trial, or hearing, that the determination of the action or proceeding, or of a cross-complaint, will necessarily involve the determination of questions inconsistent with the jurisdictional classification of the case, the court shall, on the motion of either party establishing the grounds for misclassification and good cause for not seeking reclassification earlier, or on the court's own motion at any time, reclassify the case.

(c) A motion for reclassification pursuant to this section shall be supported by a declaration, affidavit, or other evidence if necessary to establish that the case is misclassified. A declaration, affidavit, or other evidence is not required if the grounds for misclassification appear on the face of the challenged pleading. All moving and supporting papers, opposition papers, and reply papers shall be filed and served in accordance with Section 1005.

(d) An action or proceeding that is reclassified under the provisions of this section shall be deemed to have been commenced at the time the complaint or petition was initially filed, not at the time of reclassification.

(e) Nothing in this section shall be construed to preclude or affect the right to amend the pleadings as provided in this code.

(f) Nothing in this section shall be construed to require the superior court to reclassify any action or proceeding because the judgment to be rendered, as determined at the trial or hearing, is one that might have been rendered in a limited civil case.

(g) In any case where the erroneous classification is due solely to an excess in the amount of the demand, the excess may be remitted and the action may continue as a limited civil case.

(h) Upon the making of an order for reclassification, proceedings shall be had as provided in Section 399.5. Unless the court ordering the reclassification otherwise directs, the costs and fees of those proceedings, and other costs and fees of reclassifying the case, including any additional amount due for filing the initial pleading, are to be paid by the party filing the pleading that erroneously classified the case.

SEC. 64. Section 396 of the Code of Civil Procedure is amended to read:

396. If an action or proceeding is commenced in a court that lacks jurisdiction of the subject matter thereof, as determined by the complaint or petition, if there is a court of this state that has subject matter jurisdiction, the action or proceeding shall not be dismissed (except as provided in Section 399, and subdivision 1 of Section 581) but shall, on the application of either party, or on the court's own motion, be transferred to a court having jurisdiction of the subject matter that may be agreed upon by the parties, or, if they do not agree, to a court having subject matter jurisdiction that is designated by law as a proper court for the trial or determination thereof, and it shall thereupon be entered and prosecuted in the court to which it is transferred as if it had been commenced therein, all prior proceedings being saved. In any such case, if summons is served prior to the filing of the action or proceeding in the court to which it is transferred, as to any defendant, so served, who has not appeared in the action or proceeding, the time to answer or otherwise plead shall date from service upon that defendant of written notice of filing of the action or proceeding in the court to which it is transferred.

If an action or proceeding is commenced in or transferred to a court that has jurisdiction of the subject matter thereof as determined by the complaint or petition, and it thereafter appears from the verified pleadings, or at the trial, or hearing, that the determination of the action or proceeding, or of a cross-complaint, will necessarily involve the determination of questions not within the jurisdiction of the court, in which the action or proceeding is pending, the court, whenever that lack of jurisdiction appears, must suspend all further proceedings therein and transfer the action or proceeding and certify the pleadings (or if the pleadings be oral, a transcript of the same), and all papers and proceedings therein to a court having jurisdiction thereof that may be agreed upon by the parties, or, if they do not agree, to a court having subject matter jurisdiction that is designated by law as a proper court for the trial or determination thereof.

An action or proceeding that is transferred under the provisions of this section shall be deemed to have been commenced at the time the complaint or petition was filed in the court from which it was originally transferred.

Nothing herein shall be construed to preclude or affect the right to amend the pleadings as provided in this code.

Nothing herein shall be construed to require the superior court to transfer any action or proceeding because the judgment to be rendered, as determined at the trial or hearing, is one that might have been rendered by a municipal court in the same county or city and county.

In any case where the lack of jurisdiction is due solely to an excess in the amount of the demand, the excess may be remitted and the action may continue in the court where it is pending.

Upon the making of an order for transfer, proceedings shall be had as provided in Section 399 of this code, the costs and fees thereof, and of filing the case in the court to which transferred, to be paid by the party filing the pleading in which the question outside the jurisdiction of the court appears unless the court ordering the transfer shall otherwise direct.

SEC. 65. Section 396a of the Code of Civil Procedure is amended to read:

396a. In a limited civil case that is subject to Sections 1812.10 and 2984.4 of the Civil Code, or subdivision (b) of Section 395 of the Code of Civil Procedure, or is an action or proceeding for an unlawful detainer as defined in Section 1161 of the Code of Civil Procedure, the plaintiff shall state facts in the complaint, verified by the plaintiff's oath, or the oath of the plaintiff's attorney, or in an affidavit of the plaintiff or of the plaintiff's attorney filed with the complaint, showing that the action has been commenced in the proper court for the trial of the action or proceeding, and showing that the action is subject to the provisions of Sections 1812.10 and 2984.4 of the Civil Code or subdivision (b) of Section 395 of the Code of Civil Procedure, or is an action for an unlawful detainer. When the affidavit is filed with the complaint, a copy thereof shall be served with the summons. Except as herein provided, if the complaint or affidavit be not so filed, no further proceedings shall be had in the action or proceeding, except to dismiss the same without prejudice. However, the court may, on such terms as may be just, permit the affidavit to be filed subsequent to the filing of the complaint, and a copy of the affidavit shall be served on the defendant and the time to answer or otherwise plead shall date from that service. If it appears from the complaint or affidavit, or otherwise, that the court in which the action or proceeding is commenced is not the proper court for the trial thereof, the court in which the action or proceeding is commenced, or a judge thereof, shall, whenever that fact appears, transfer it to the proper court, on its own motion, or on motion of the defendant, unless the defendant consents in writing, or in open court (consent in open court being entered in the minutes or docket of the court), to the keeping of the action or proceeding in the court where commenced. If that consent be given, the action or proceeding may continue in the court where commenced. Notwithstanding the provisions of Section 1801.1 and subdivision (f) of Section 2983.7 of the Civil Code, that consent may be given by a defendant who is represented by counsel at the time the consent is given, and where an action or proceeding is subject to subdivision (b) of Section 395 or is for an unlawful detainer, that consent may only be given by a defendant who is represented by counsel at the time the consent is given. In any case where the transfer of the action or proceeding is ordered under the provisions of this paragraph, if summons is served prior to the filing of the action or proceeding in the court to which it is transferred, as to any defendant, so served, who has not appeared in

the action or proceeding, the time to answer or otherwise plead shall date from service upon that defendant of written notice of the filing.

When it appears from the complaint or affidavit of the plaintiff that the court in which the action or proceeding is commenced is a proper court for the trial thereof, all proper proceedings may be had, and the action or proceeding may be tried therein; provided, however, that a motion for a transfer of the action or proceeding may be made as in other cases, within the time, upon the grounds, and in the manner provided in this title, and if upon that motion it appears that the action or proceeding is not pending in the proper court, or should for other cause be transferred, the same shall be ordered transferred as provided in this title.

When any action or proceeding is ordered transferred as herein provided, proceedings shall be had, and the costs and fees shall be paid, as provided in Sections 398 and 399 of this code.

SEC. 66. Section 399.5 is added to the Code of Civil Procedure, to read:

399.5. (a) Where an order is made for reclassification of an action or proceeding pursuant to Section 395.9, the clerk shall refile the case as reclassified on satisfaction of both of the following conditions:

(1) Costs and fees have been paid in accordance with Section 395.9.

(2) Either the time within which to file a petition for writ of mandate pursuant to Section 400 has expired and no writ has been filed, or a writ has been filed and a judgment denying the writ has become final.

(b) If the costs and fees have not been paid in accordance with Section 395.9 within five days after service of notice of the order for reclassification, then any party interested in the case, regardless of whether that party is named in the complaint, may pay the costs and fees, and the clerk shall refile the case as if the costs and fees had been paid in accordance with Section 395.9. The costs and fees shall then be a proper item of costs of the party paying them, recoverable if that party prevails in the action or proceeding. Otherwise, the costs and fees shall be offset against and deducted from the amount, if any, awarded to the party responsible for the costs and fees under Section 395.9, if that party prevails in the action or proceeding.

(c) The cause of action shall not be further prosecuted in any court until the costs and fees of reclassifying the case are paid. If those costs and fees are not paid within 30 days after service of notice of an order for reclassification, or if a copy of a petition for writ of mandate pursuant to Section 400 is filed in the trial court, then within 30 days after notice of finality of the order for reclassification, the court on a motion by any party may dismiss the action without prejudice to the cause on the condition that no other action on the cause may be commenced in another court before the costs and fees are paid. Where a petition for writ of mandate does not result in a stay of

proceedings, the time for payment of those costs and fees is 60 days after service of the notice of the order.

(d) At the time of refiling the case as reclassified, the clerk shall mail notice to all parties who have appeared in the action or proceeding, stating the date on which refiling occurred and the number assigned to the case as refiled.

(e) The court shall have and exercise over the refiled action or proceeding the same authority as if the action or proceeding had been originally commenced as reclassified, all prior proceedings being saved. The court may allow or require whatever amendment of the pleadings, filing and service of amended, additional, or supplemental pleadings, or giving of notice, or other appropriate action, as may be necessary for the proper presentation and determination of the action or proceeding as reclassified.

SEC. 67. Section 400 of the Code of Civil Procedure is amended to read:

400. When an order is made by the superior court granting or denying a motion to change the place of trial or a motion to reclassify an action or proceeding pursuant to Section 395.9, the party aggrieved by the order may, within 20 days after service of a written notice of the order, petition the court of appeal for the district in which the court granting or denying the motion is situated for a writ of mandate requiring trial of the case in the proper court or proper classification of the action or proceeding pursuant to Section 395.9. The superior court may, for good cause, and prior to the expiration of the initial 20-day period, extend the time for one additional period not to exceed 10 days. The petitioner shall file a copy of the petition in the trial court immediately after the petition is filed in the court of appeal. The court of appeal may stay all proceedings in the case, pending judgment on the petition becoming final. The clerk of the court of appeal shall file with the clerk of the trial court, a copy of any final order or final judgment immediately after the order or judgment becomes final.

SEC. 68. Section 402 of the Code of Civil Procedure is amended to read:

402. The presiding judge of a municipal court district may order, for the convenience of the court, that any case pending trial be transferred to a contiguous municipal court district in the same county if the presiding judge in the district to which the case is proposed to be transferred consents to the transfer and notice thereof is given to the parties or their attorneys at least 10 days in advance of the date fixed for trial.

No fees shall be charged for the transfer of any case pursuant to this section.

SEC. 69. Section 402.5 is added to the Code of Civil Procedure, to read:

402.5. The superior court in a county in which there is no municipal court may transfer a limited civil case to another branch or location of the superior court in the same county.

SEC. 70. Section 422.20 of the Code of Civil Procedure is repealed.

SEC. 71. Section 422.30 of the Code of Civil Procedure is amended to read:

422.30. (a) Every pleading shall contain a caption setting forth:

(1) The name of the court and county, and, in municipal courts, the name of the judicial district, in which the action is brought.

(2) The title of the action.

(b) In a limited civil case in a county in which there is no municipal court, the caption shall state that the case is a limited civil case.

SEC. 72. Section 425.10 of the Code of Civil Procedure is amended to read:

425.10. A complaint or cross-complaint shall contain both of the following:

(a) A statement of the facts constituting the cause of action, in ordinary and concise language.

(b) A demand for judgment for the relief to which the pleader claims to be entitled. If the recovery of money or damages be demanded, the amount thereof shall be stated, unless the action is brought in the superior court to recover actual or punitive damages for personal injury or wrongful death, in which case the amount thereof shall not be stated, except in a limited civil case.

SEC. 73. Section 425.11 of the Code of Civil Procedure is amended to read:

425.11. (a) As used in this section:

(1) "Complaint" includes a cross-complaint.

(2) "Plaintiff" includes a cross-complainant.

(3) "Defendant" includes a cross-defendant.

(b) When a complaint is filed in an action in the superior court to recover damages for personal injury or wrongful death, the defendant may at any time request a statement setting forth the nature and amount of damages being sought, except in a limited civil case. The request shall be served upon the plaintiff, who shall serve a responsive statement as to the damages within 15 days. In the event that a response is not served, the party, on notice to the plaintiff, may petition the court in which the action is pending to order the plaintiff to serve a responsive statement.

(c) If no request is made for the statement referred to in subdivision (a), the plaintiff shall serve the statement on the defendant before a default may be taken.

(d) The statement referred to in subdivision (b) shall be served in the following manner:

(1) If a party has not appeared in the action, the statement shall be served in the same manner as a summons.

(2) If a party has appeared in the action, the statement shall be served upon his or her attorney, or upon the party if he or she has appeared without an attorney, in the manner provided for service of a summons or in the manner provided by Chapter 5 (commencing with Section 1010) of Title 14 of Part 2.

(e) The statement referred to in subdivision (b) may be combined with the statement described in Section 425.115.

SEC. 74. Section 489.220 of the Code of Civil Procedure is amended to read:

489.220. (a) Except as provided in subdivision (b), the amount of an undertaking filed pursuant to this article shall be two thousand five hundred dollars ($2,500) in a limited civil case, and seven thousand five hundred dollars ($7,500) otherwise.

(b) If, upon objection to the undertaking, the court determines that the probable recovery for wrongful attachment exceeds the amount of the undertaking, it shall order the amount of the undertaking increased to the amount it determines to be the probable recovery for wrongful attachment if it is ultimately determined that the attachment was wrongful.

SEC. 75. Section 564 of the Code of Civil Procedure is amended to read:

564. (a) A receiver may be appointed, in the manner provided in this chapter, by the court in which an action or proceeding is pending in any case in which the court is empowered by law to appoint a receiver.

(b) In superior court a receiver may be appointed by the court in which an action or proceeding is pending, or by a judge thereof, in the following cases, other than in a limited civil case:

(1) In an action by a vendor to vacate a fraudulent purchase of property, or by a creditor to subject any property or fund to the creditor's claim, or between partners or others jointly owning or interested in any property or fund, on the application of the plaintiff, or of any party whose right to or interest in the property or fund, or the proceeds thereof, is probable, and where it is shown that the property or fund is in danger of being lost, removed, or materially injured.

(2) In an action by a secured lender for the foreclosure of the deed of trust or mortgage and sale of the property upon which there is a lien under a deed of trust or mortgage, where it appears that the property is in danger of being lost, removed, or materially injured, or that the condition of the deed of trust or mortgage has not been performed, and that the property is probably insufficient to discharge the deed of trust or mortgage debt.

(3) After judgment, to carry the judgment into effect.

(4) After judgment, to dispose of the property according to the judgment, or to preserve it during the pendency of an appeal, or pursuant to Title 9 (commencing with Section 680.010) (enforcement of judgments), or after sale of real property pursuant

to a decree of foreclosure, during the redemption period, to collect, expend, and disburse rents as directed by the court or otherwise provided by law.

(5) In the cases when a corporation has been dissolved, or is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights.

(6) In an action of unlawful detainer.

(7) At the request of the Public Utilities Commission pursuant to Sections 855 and 5259.5 of the Public Utilities Code.

(8) In all other cases where receivers have heretofore been appointed by the usages of courts of equity.

(9) At the request of the Office of Statewide Health Planning and Development, or the Attorney General, pursuant to Section 436.222 of the Health and Safety Code.

(10) In an action by a secured lender for specified performance of an assignment of rents provision in a deed of trust, mortgage, or separate assignment document. In addition, that appointment may be continued after entry of a judgment for specific performance in that action, if appropriate to protect, operate, or maintain real property encumbered by the deed of trust or mortgage or to collect the rents therefrom while a pending nonjudicial foreclosure under power of sale in the deed of trust or mortgage is being completed.

(11) In a case brought by an assignee under an assignment of leases, rents, issues, or profits pursuant to subdivision (g) of Section 2938 of the Civil Code.

(c) A receiver may be appointed, in the manner provided in this chapter, including, but not limited to, Section 566, by the superior court in an action other than a limited civil case brought by a secured lender to enforce the rights provided in Section 2929.5 of the Civil Code, to enable the secured lender to enter and inspect the real property security for the purpose of determining the existence, location, nature, and magnitude of any past or present release or threatened release of any hazardous substance into, onto, beneath, or from the real property security. The secured lender shall not abuse the right of entry and inspection or use it to harass the borrower or tenant of the property. Except in case of an emergency, when the borrower or tenant of the property has abandoned the premises, or if it is impracticable to do so, the secured lender shall give the borrower or tenant of the property reasonable notice of the secured lender's intent to enter and shall enter only during the borrower's or tenant's normal business hours. Twenty-four hours' notice shall be presumed to be reasonable notice in the absence of evidence to the contrary.

(d) Any action by a secured lender to appoint a receiver pursuant to this section shall not constitute an action within the meaning of subdivision (a) of Section 726.

(e) For purposes of this section:

(1) "Borrower" means the trustor under a deed of trust, or a mortgagor under a mortgage, where the deed of trust or mortgage encumbers real property security and secures the performance of the trustor or mortgagor under a loan, extension of credit, guaranty, or other obligation. The term includes any successor-in-interest of the trustor or mortgagor to the real property security before the deed of trust or mortgage has been discharged, reconveyed, or foreclosed upon.

(2) "Hazardous substance" means (A) any "hazardous substance" as defined in subdivision (f) of Section 25281 of the Health and Safety Code as effective on January 1, 1991, or as subsequently amended, (B) any "waste" as defined in subdivision (d) of Section 13050 of the Water Code as effective on January 1, 1991, or as subsequently amended, or (C) petroleum, including crude oil or any fraction thereof, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel, or any mixture thereof.

(3) "Real property security" means any real property and improvements, other than a separate interest and any related interest in the common area of a residential common interest development, as the terms "separate interest," "common area," and "common interest development" are defined in Section 1351 of the Civil Code, or real property consisting of one acre or less that contains 1 to 15 dwelling units.

(4) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, including continuing migration, of hazardous substances into, onto, or through soil, surface water, or groundwater.

(5) "Secured lender" means the beneficiary under a deed of trust against the real property security, or the mortgagee under a mortgage against the real property security, and any successor-in-interest of the beneficiary or mortgagee to the deed of trust or mortgage.

SEC. 76. Section 575 of the Code of Civil Procedure is amended to read:

575. The Judicial Council may promulgate rules governing pretrial conferences, and the time, manner and nature thereof, in civil cases at issue, or in one or more classes thereof, in the superior and municipal courts.

SEC. 77. Section 575.1 of the Code of Civil Procedure is amended to read:

575.1. (a) The presiding judge of each superior and municipal court may prepare, with the assistance of appropriate committees of the court, proposed local rules designed to expedite and facilitate the business of the court. The rules need not be limited to those actions on the civil active list, but may provide for the supervision and judicial management of actions from the date they are filed. Rules prepared pursuant to this section shall be submitted for consideration

to the judges of the court and, upon approval by a majority of the judges, the judges shall have the proposed rules published and submitted to the local bar and others, as specified by the Judicial Council, for consideration and recommendations.

(b) After a majority of the judges have officially adopted the rules, 61 copies or a greater number as specified by Judicial Council rule, shall be filed with the Judicial Council as required by Section 68071 of the Government Code. The Judicial Council shall deposit a copy of each rule and amendment with each county law library or county clerk where it shall be made available for public examination. The local rules shall also be published for general distribution in accordance with rules adopted by the Judicial Council. Each court shall make its local rules available for inspection and copying in every location of the court that generally accepts filing of papers. The court may impose a reasonable charge for copying the rules and may impose a reasonable page limit on copying. The rules shall be accompanied by a notice indicating where a full set of the rules may be purchased.

(c) If a judge of a court adopts a rule that applies solely to cases in that judge's courtroom, or a particular branch or district of a court adopts a rule that applies solely to cases in that particular branch or district of a court, the court shall publish these rules as part of the general publication of rules required by the California Rules of Court. The court shall organize the rules so that rules on a common subject, whether individual, branch, district, or courtwide appear sequentially. Individual judges' rules and branch and district rules are local rules of court for purposes of this section and for purposes of the adoption, publication, comment, and filing requirements set forth in the Judicial Council rules applicable to local court rules.

SEC. 78. Section 580 of the Code of Civil Procedure is amended to read:

580. (a) The relief granted to the plaintiff, if there is no answer, cannot exceed that which he or she shall have demanded in his or her complaint, in the statement required by Section 425.11, or in the statement provided for by Section 425.115; but in any other case, the court may grant the plaintiff any relief consistent with the case made by the complaint and embraced within the issue. The court may impose liability, regardless of whether the theory upon which liability is sought to be imposed involves legal or equitable principles.

(b) Notwithstanding subdivision (a), the following types of relief may not be granted in a limited civil case:

(1) Relief exceeding the maximum amount in controversy for a limited civil case as provided in Section 85, exclusive of attorney's fees, interest, and costs.

(2) A permanent injunction.

(3) A determination of title to real property.

(4) Enforcement of an order under the Family Code.

(5) Declaratory relief, except as authorized by Section 86.

SEC. 79. Section 581d of the Code of Civil Procedure is amended to read:

581d. A written dismissal of an action shall be entered in the clerk's register and is effective for all purposes when so entered.

All dismissals ordered by the court shall be in the form of a written order signed by the court and filed in the action and those orders when so filed shall constitute judgments and be effective for all purposes, and the clerk shall note those judgments in the register of actions in the case.

SEC. 80. Section 582.5 is added to the Code of Civil Procedure, to read:

582.5. In a limited civil case in which the defendant has appeared, if the judgment or order is for the payment of money by the defendant, the defendant shall pay the judgment immediately or at any time and upon terms and conditions, including installment payments, that the court may prescribe. The court may amend the terms and conditions for payment of the judgment or order at any time to provide for installment payments for good cause upon motion by a party and notice to all affected parties, regardless of the nature of the underlying debt and regardless of whether the moving party appeared before entry of the judgment or order. In any determination regarding the imposition of terms and conditions upon the payment of the judgment, the court shall consider any factors that would be relevant to the determination of a claim for exemption pursuant to Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2 or the examination of a debtor pursuant to Article 2 (commencing with Section 708.110) of Chapter 6 of Division 2 of Title 9.

SEC. 81. Section 594 of the Code of Civil Procedure is amended to read:

594. (a) In superior and municipal courts either party may bring an issue to trial or to a hearing, and, in the absence of the adverse party, unless the court, for good cause, otherwise directs, may proceed with the case and take a dismissal of the action, or a verdict, or judgment, as the case may require; provided, however, if the issue to be tried is an issue of fact, proof shall first be made to the satisfaction of the court that the adverse party has had 15 days' notice of such trial or five days' notice of the trial in an unlawful detainer action as specified in subdivision (b). If the adverse party has served notice of trial upon the party seeking the dismissal, verdict, or judgment at least five days prior to the trial, the adverse party shall be deemed to have had notice.

(b) The notice to the adverse party required by subdivision (a) shall be served by mail on all the parties by the clerk of the court not less than 20 days prior to the date set for trial. In an unlawful detainer action where notice is served by mail that service shall be mailed not less than 10 days prior to the date set for trial. If notice is not served by the clerk as required by this subdivision, it may be served by mail

by any party on the adverse party not less than 15 days prior to the date set for trial, and in an unlawful detainer action where notice is served by mail that service shall be mailed not less than 10 days prior to the date set for trial. The time provisions of Section 1013 shall not serve to extend the notice of trial requirements under this subdivision for unlawful detainer actions. If notice is served by the clerk, proof thereof may be made by introduction into evidence of the clerk's certificate pursuant to subdivision (3) of Section 1013a or other competent evidence. If notice is served by a party, proof may be made by introduction into evidence of an affidavit or certificate pursuant to subdivision (1) or (2) of Section 1013a or other competent evidence. The provisions of this subdivision are exclusive.

SEC. 82. Section 628 of the Code of Civil Procedure is amended to read:

628. In superior and municipal courts upon receipt of a verdict, an entry must be made in the minutes of the court, specifying the time of trial, the names of the jurors and witnesses, and setting out the verdict at length; and where a special verdict is found, either the judgment rendered thereon, or if the case be reserved for argument or further consideration, the order thus reserving it.

SEC. 83. Section 631 of the Code of Civil Procedure is amended to read:

631. (a) Trial by jury may be waived by the several parties to an issue of fact in any of the following ways:

(1) By failing to appear at the trial.

(2) By written consent filed with the clerk or judge.

(3) By oral consent, in open court, entered in the minutes or docket.

(4) By failing to announce that a jury is required, at the time the cause is first set for trial, if it is set upon notice or stipulation, or within five days after notice of setting if it is set without notice or stipulation.

(5) By failing to deposit with the clerk, or judge, advance jury fees 25 days prior to the date set for trial, except in unlawful detainer actions where the fees shall be deposited at least five days prior to the date set for trial, or as provided by subdivision (b). The advanced jury fee shall not exceed the amount necessary to pay the average mileage and fees of 20 trial jurors for one day in the court to which the jurors are summoned.

(6) By failing to deposit with the clerk or judge, promptly after the impanelment of the jury, a sum equal to the mileage or transportation (if any be allowed by law) of the jury accrued up to that time.

(7) By failing to deposit with the clerk or judge, at the beginning of the second and each succeeding day's session a sum equal to one day's fees of the jury, and the mileage or transportation, if any.

(b) In a superior court action, other than a limited civil case, if a jury is demanded by either party in the memorandum to set the cause for trial and the party, prior to trial, by announcement or by operation of law waives a trial by jury, then all adverse parties shall

have five days following the receipt of notice of the waiver to file and serve a demand for a trial by jury and to deposit any advance jury fees that are then due.

(c) When the party who has demanded trial by jury either waives the trial upon or after the assignment for trial to a specific department of the court, or upon or after the commencement of the trial, or fails to deposit the fees as provided in paragraph (6) of subdivision (a), trial by jury shall be waived by the other party either failing promptly to demand trial by jury before the judge in whose department the waiver, other than for the failure to deposit such fees, was made, or by that party's failing promptly to deposit the fees provided in paragraph (6) of subdivision (a).

(d) The court may, in its discretion upon just terms, allow a trial by jury although there may have been a waiver of a trial by jury.

SEC. 83.5. Section 631 of the Code of Civil Procedure is amended to read:

631. (a) Trial by jury may be waived by the several parties to an issue of fact in any of the following ways:

(1) By failing to appear at the trial.

(2) By written consent filed with the clerk or judge.

(3) By oral consent, in open court, entered in the minutes or docket.

(4) By failing to announce that a jury is required, at the time the cause is first set for trial, if it is set upon notice or stipulation, or within five days after notice of setting if it is set without notice or stipulation.

(5) By failing to deposit with the clerk, or judge, advance jury fees 25 days prior to the date set for trial, except in unlawful detainer actions where the fees shall be deposited at least five days prior to the date set for trial, or as provided by subdivision (b). An advanced jury fee deposited pursuant to this paragraph may not exceed a total of one hundred fifty dollars ($150).

(6) By failing to deposit with the clerk or judge, promptly after the impanelment of the jury, a sum equal to the mileage or transportation (if any be allowed by law) of the jury accrued up to that time.

(7) By failing to deposit with the clerk or judge, at the beginning of the second and each succeeding day's session a sum equal to one day's fees of the jury, and the mileage or transportation, if any.

(b) In a superior court action, other than a limited civil case, if a jury is demanded by either party in the memorandum to set the cause for trial and the party, prior to trial, by announcement or by operation of law waives a trial by jury, then all adverse parties shall have five days following the receipt of notice of the waiver to file and serve a demand for a trial by jury and to deposit any advance jury fees that are then due.

(c) When the party who has demanded trial by jury either waives the trial upon or after the assignment for trial to a specific department of the court, or upon or after the commencement of the trial, or fails to deposit the fees as provided in paragraph (6) of

subdivision (a), trial by jury shall be waived by the other party either failing promptly to demand trial by jury before the judge in whose department the waiver, other than for the failure to deposit those fees, was made, or by that party's failing promptly to deposit the fees provided in paragraph (6) of subdivision (a).

(d) The court may, in its discretion upon just terms, allow a trial by jury although there may have been a waiver of a trial by jury.

SEC. 84. Section 632 of the Code of Civil Procedure is amended to read:

632. In superior and municipal courts, upon the trial of a question of fact by the court, written findings of fact and conclusions of law shall not be required. The court shall issue a statement of decision explaining the factual and legal basis for its decision as to each of the principal controverted issues at trial upon the request of any party appearing at the trial. The request must be made within 10 days after the court announces a tentative decision unless the trial is concluded within one calendar day or in less than eight hours over more than one day in which event the request must be made prior to the submission of the matter for decision. The request for a statement of decision shall specify those controverted issues as to which the party is requesting a statement of decision. After a party has requested the statement, any party may make proposals as to the content of the statement of decision.

The statement of decision shall be in writing, unless the parties appearing at trial agree otherwise; however, when the trial is concluded within one calendar day or in less than 8 hours over more than one day, the statement of decision may be made orally on the record in the presence of the parties.

SEC. 85. Section 655 of the Code of Civil Procedure is amended to read:

655. The provisions of this article apply to superior or municipal courts.

SEC. 86. Section 668 of the Code of Civil Procedure is amended to read:

668. Except as provided in Section 668.5, the clerk of the superior court and municipal court, must keep, with the records of the court, a book called the "judgment book," in which judgments must be entered.

SEC. 87. Section 670 of the Code of Civil Procedure is amended to read:

670. In superior and municipal courts the following papers, without being attached together, shall constitute the judgment roll:

(a) In case the complaint is not answered by any defendant, the summons, with the affidavit or proof of service; the complaint; the request for entry of default with a memorandum indorsed thereon that the default of the defendant in not answering was entered, and a copy of the judgment; if defendant has appeared by demurrer, and the demurrer has been overruled, then notice of the overruling

thereof served on defendant's attorney, together with proof of the service; and in case the service so made is by publication, the affidavit for publication of summons, and the order directing the publication of summons.

(b) In all other cases, the pleadings, all orders striking out any pleading in whole or in part, a copy of the verdict of the jury, the statement of decision of the court, or finding of the referee, and a copy of any order made on demurrer, or relating to a change of parties, and a copy of the judgment; if there are two or more defendants in the action, and any one of them has allowed judgment to pass against him or her by default, the summons, with proof of its service, on the defendant, and if the service on the defaulting defendant be by publication, then the affidavit for publication, and the order directing the publication of the summons.

SEC. 88. Section 685.030 of the Code of Civil Procedure is amended to read:

685.030. (a) If a money judgment is satisfied in full pursuant to a writ under this title, interest ceases to accrue on the judgment:

(1) If the proceeds of collection are paid in a lump sum, on the date of levy.

(2) If the money judgment is satisfied pursuant to an earnings withholding order, on the date and in the manner provided in Section 706.024 or Section 706.028.

(3) In any other case, on the date the proceeds of sale or collection are actually received by the levying officer.

(b) If a money judgment is satisfied in full other than pursuant to a writ under this title, interest ceases to accrue on the date the judgment is satisfied in full.

(c) If a money judgment is partially satisfied pursuant to a writ under this title or is otherwise partially satisfied, interest ceases to accrue as to the part satisfied on the date the part is satisfied.

(d) For the purposes of subdivisions (b) and (c), the date a money judgment is satisfied in full or in part is the earliest of the following times:

(1) The date satisfaction is actually received by the judgment creditor.

(2) The date satisfaction is tendered to the judgment creditor or deposited in court for the judgment creditor.

(3) The date of any other performance that has the effect of satisfaction.

(e) In a limited civil case, the clerk of a court may enter in the Register of Actions a writ of execution on a money judgment as returned wholly satisfied when the judgment amount, as specified on the writ, is fully collected and only an interest deficit of no more than ten dollars ($10) exists, due to automation of the continual daily interest accrual calculation.

SEC. 89. Section 688.010 of the Code of Civil Procedure is amended to read:

688.010. For the purpose of the remedies provided under this article, jurisdiction is conferred upon any of the following courts:

(a) The superior court, regardless of whether the municipal court also has jurisdiction under subdivision (b).

(b) The municipal court if (1) the amount of liability sought to be collected does not exceed the jurisdictional amount of the court and (2) the legality of the liability being enforced is not contested by the person against whom enforcement is sought.

SEC. 90. Section 697.310 of the Code of Civil Procedure is amended to read:

697.310. (a) Except as otherwise provided by statute, a judgment lien on real property is created under this section by recording an abstract of a money judgment with the county recorder.

(b) Unless the money judgment is satisfied or the judgment lien is released, subject to Section 683.180 (renewal of judgment), a judgment lien created under this section continues until 10 years from the date of entry of the judgment.

(c) The creation and duration of a judgment lien under a money judgment entered pursuant to Section 117 or 582.5 of this code or Section 16380 of the Vehicle Code or under a similar judgment is governed by this section, notwithstanding that the judgment may be payable in installments.

SEC. 91. Section 697.350 of the Code of Civil Procedure is amended to read:

697.350. (a) Except as otherwise provided by statute, a judgment lien on real property is a lien for the amount required to satisfy the money judgment.

(b) A judgment lien on real property created under a money judgment payable in installments pursuant to Section 117 or 582.5 of this code or Section 16380 of the Vehicle Code or under a similar judgment is in the full amount required to satisfy the judgment, but the judgment lien may not be enforced for the amount of unmatured installments unless the court so orders.

(c) A judgment lien created pursuant to Section 697.320 is a lien for the amount of the installments as they mature under the terms of the judgment, plus accrued interest and the costs as they are added to the judgment pursuant to Chapter 5 (commencing with Section 685.010) of Division 1, and less the amount of any partial satisfactions, but does not become a lien for any installment until it becomes due and payable under the terms of the judgment.

SEC. 92. Section 697.540 of the Code of Civil Procedure is amended to read:

697.540. (a) Except as otherwise provided by statute, a judgment lien on personal property is a lien for the amount required to satisfy the money judgment.

(b) A judgment lien on personal property created under a money judgment payable in installments pursuant to Section 117 or 582.5 of this code or pursuant to Section 16380 of the Vehicle Code is in the

full amount required to satisfy the judgment, but the judgment lien may not be enforced for the amount of unmatured installments unless the court so orders.

SEC. 93. Section 703.600 of the Code of Civil Procedure is amended to read:

703.600. An appeal lies from any order made under this article.

SEC. 94. Section 706.105 of the Code of Civil Procedure is amended to read:

706.105. (a) A judgment debtor may claim an exemption under Section 706.051 under either of the following circumstances:

(1) No prior hearing has been held with respect to the earnings withholding order.

(2) There has been a material change in circumstances since the time of the last prior hearing on the earnings withholding order.

(b) A claim of exemption shall be made by filing with the levying officer an original and one copy of (1) the judgment debtor's claim of exemption and (2) the judgment debtor's financial statement.

(c) Upon filing of the claim of exemption, the levying officer shall promptly send to the judgment creditor, at the address stated in the application for the earnings withholding order, by first-class mail, postage prepaid, all of the following:

(1) A copy of the claim of exemption.

(2) A copy of the financial statement.

(3) A notice of claim of exemption. The notice shall state that the claim of exemption has been filed and that the earnings withholding order will be terminated, or modified to reflect the amount of earnings claimed to be exempt in the claim of exemption, unless a notice of opposition to the claim of exemption is filed with the levying officer by the judgment creditor within 10 days after the date of the mailing of the notice of claim of exemption.

(d) A judgment creditor who desires to contest a claim of exemption shall, within 10 days after the date of the mailing of the notice of claim of exemption, file with the levying officer a notice of opposition to the claim of exemption.

(e) If a notice of opposition to the claim of exemption is filed with the levying officer within the 10-day period, the judgment creditor is entitled to a hearing on the claim of exemption. If the judgment creditor desires a hearing on the claim of exemption, the judgment creditor shall file a notice of motion for an order determining the claim of exemption with the court within 10 days after the date the levying officer mailed the notice of claim of exemption. If the notice of motion is so filed, the hearing on the motion shall be held not later than 30 days from the date the notice of motion was filed unless continued by the court for good cause. At the time prescribed by subdivision (b) of Section 1005, the judgment creditor shall give written notice of the hearing to the levying officer and shall serve a notice of the hearing and a copy of the notice of opposition to the claim of exemption on the judgment debtor and, if the claim of

exemption so requested, on the attorney for the judgment debtor. Service is deemed made when the notice of the hearing and a copy of the notice of opposition to the claim of exemption are deposited in the mail, postage prepaid, addressed to the judgment debtor at the address stated in the claim of exemption and, if service on the attorney for the judgment debtor was requested in the claim of exemption, to the attorney at the address stated in the claim of exemption. The judgment creditor shall file proof of the service with the court. After receiving the notice of the hearing and before the date set for the hearing, the levying officer shall file the claim of exemption and the notice of opposition to the claim of exemption with the court.

(f) If the levying officer does not receive a notice of opposition to the claim of exemption within the 10-day period after the date of mailing of the notice of claim of exemption and a notice of the hearing not later than 10 days after the filing of the notice of opposition to the claim of exemption, the levying officer shall serve on the employer one of the following:

(1) A notice that the earnings withholding order has been terminated if all of the judgment debtor's earnings were claimed to be exempt.

(2) A modified earnings withholding order that reflects the amount of earnings claimed to be exempt in the claim of exemption if only a portion of the judgment debtor's earnings was claimed to be exempt.

(g) If, after hearing, the court orders that the earnings withholding order be modified or terminated, the clerk shall promptly transmit a certified copy of the order to the levying officer who shall promptly serve on the employer of the judgment debtor (1) a copy of the modified earnings withholding order or (2) a notice that the earnings withholding order has been terminated. The court may order that the earnings withholding order be terminated as of a date that precedes the date of hearing. If the court determines that any amount withheld pursuant to the earnings withholding order shall be paid to the judgment debtor, the court shall make an order directing the person who holds that amount to pay it promptly to the judgment debtor.

(h) If the earnings withholding order is terminated by the court, unless the court otherwise orders or unless there is a material change of circumstances since the time of the last prior hearing on the earnings withholding order, the judgment creditor may not apply for another earnings withholding order directed to the same employer with respect to the same judgment debtor for a period of 100 days following the date of service of the earnings withholding order or 60 days after the date of the termination of the order, whichever is later.

(i) If an employer has withheld and paid over amounts pursuant to an earnings withholding order after the date of termination of the order but prior to the receipt of notice of its termination, the

judgment debtor may recover those amounts only from the levying officer if the levying officer still holds those amounts or, if those amounts have been paid over to the judgment creditor, from the judgment creditor. If the employer has withheld amounts pursuant to an earnings withholding order after termination of the order but has not paid over those amounts to the levying officer, the employer shall promptly pay those amounts to the judgment debtor.

(j) An appeal lies from any court order under this section denying a claim of exemption or modifying or terminating an earnings withholding order. An appeal by the judgment creditor from an order modifying or terminating the earnings withholding order does not stay the order from which the appeal is taken. Notwithstanding the appeal, until the order modifying or terminating the earnings withholding order is set aside or modified, the order allowing the claim of exemption in whole or in part shall be given the same effect as if the appeal had not been taken.

(k) This section does not apply to a withholding order for support or a withholding order for taxes.

SEC. 95. Section 708.180 of the Code of Civil Procedure is amended to read:

708.180. (a) Subject to subdivision (b), if a third person examined pursuant to Section 708.120 claims an interest in the property adverse to the judgment debtor or denies the debt, the court may, if the judgment creditor so requests, determine the interests in the property or the existence of the debt. The determination is conclusive as to the parties to the proceeding and the third person, but an appeal may be taken from the determination. The court may grant a continuance for a reasonable time for discovery proceedings, the production of evidence, or other preparation for the hearing.

(b) The court may not make the determination provided in subdivision (a) if the third person's claim is made in good faith and any of the following conditions is satisfied:

(1) The court would not be a proper court for the trial of an independent civil action (including a creditor's suit) for the determination of the interests in the property or the existence of the debt, and the third person objects to the determination of the matter under subdivision (a).

(2) At the time an order for examination pursuant to Section 708.120 is served on the third person a civil action (including a creditor's suit) is pending with respect to the interests in the property or the existence of the debt.

(3) The court determines that the interests in the property or the existence of the debt should be determined in a creditor's suit.

(c) Upon application of the judgment creditor made ex parte, the court may make an order forbidding transfer of the property to the judgment debtor or payment of the debt to the judgment debtor until the interests in the property or the existence of the debt is

determined pursuant to subdivision (a) or until a creditor's suit may be commenced and an order obtained pursuant to Section 708.240. An undertaking may be required in the discretion of the court. The court may modify or vacate the order at any time with or without a hearing on such terms as are just.

(d) Upon application of the judgment creditor upon noticed motion, the court may, if it determines that the judgment debtor probably owns an interest in the property or that the debt probably is owed to the judgment debtor, make an order forbidding the transfer or other disposition of the property to any person or forbidding payment of the debt until the interests in the property or the existence of the debt is determined pursuant to subdivision (a) or until a creditor's suit may be commenced and an order obtained pursuant to Section 708.240. The court shall require the judgment creditor to furnish an undertaking as provided in Section 529. The court may modify or vacate the order at any time after notice and hearing on such terms as are just.

SEC. 96. Section 720.160 of the Code of Civil Procedure is amended to read:

720.160. (a) If the creditor files with the levying officer an undertaking that satisfies the requirements of this section within the time allowed under subdivision (b) of Section 720.140:

(1) The levying officer shall execute the writ in the manner provided by law unless the third person files an undertaking to release the property pursuant to Chapter 6 (commencing with Section 720.610).

(2) After sale, payment, or delivery of the property pursuant to the writ, the property is free of all claims of the third person for which the creditor has given the undertaking.

(b) Subject to Sections 720.770 and 996.010, unless the creditor elects to file an undertaking in a larger amount, the amount of the undertaking filed by the creditor under this section shall be in the amount of:

(1) Except as provided in paragraph (2), seven thousand five hundred dollars ($7,500), or twice the amount of the execution lien as of the date of levy or other enforcement lien as of the date it was created, whichever is the lesser amount.

(2) In a limited civil case, two thousand five hundred dollars ($2,500), or twice the amount of the execution lien as of the date of levy or other enforcement lien as of the date it was created, whichever is the lesser amount.

(c) An undertaking given by the creditor under this chapter shall:

(1) Be made in favor of the third person.

(2) Indemnify the third person against any loss, liability, damages, costs, and attorney's fees, incurred by reason of the enforcement proceedings.

(3) Be conditioned on a final judgment that the third person owns or has the right of possession of the property.

(d) If the creditor is a public entity exempt from giving an undertaking, the public entity shall, in lieu of filing the undertaking, file with the levying officer a notice stating that the public entity opposes the claim of the third person. When so filed, the notice is deemed to satisfy the requirement of this section that an undertaking be filed.

SEC. 97. Section 720.260 of the Code of Civil Procedure is amended to read:

720.260. (a) If the creditor within the time allowed under subdivision (b) of Section 720.240 either files with the levying officer an undertaking that satisfies the requirements of this section and a statement that satisfies the requirements of Section 720.280 or makes a deposit with the levying officer of the amount claimed under Section 720.230:

(1) The levying officer shall execute the writ in the manner provided by law unless, in a case where the creditor has filed an undertaking, the secured party or lienholder files an undertaking to release the property pursuant to Chapter 6 (commencing with Section 720.610).

(2) After sale, payment, or delivery of the property pursuant to the writ, the property is free of all claims or liens of the secured party or lienholder for which the creditor has given the undertaking or made the deposit.

(b) Subject to Sections 720.770 and 996.010, unless the creditor elects to file an undertaking in a larger amount, the amount of the undertaking filed by the creditor under this section shall be in the amount of:

(1) Except as provided in paragraph (2), seven thousand five hundred dollars ($7,500), or twice the amount of the execution lien as of the date of levy or other enforcement lien as of the date it was created, whichever is the lesser amount.

(2) In a limited civil case, two thousand five hundred dollars ($2,500), or twice the amount of the execution lien as of the date of levy or other enforcement lien as of the date it was created, whichever is the lesser amount.

(c) An undertaking given by the creditor under this chapter shall:

(1) Be made in favor of the secured party or lienholder.

(2) Indemnify the secured party or lienholder against any loss, liability, damages, costs, and attorney's fees, incurred by reason of the enforcement proceedings.

(3) Be conditioned on a final judgment that the security interest or lien of the third person is entitled to priority over the creditor's lien.

(d) If the creditor is a public entity exempt from giving an undertaking, the public entity shall, in lieu of filing the undertaking, file with the levying officer a notice stating that the public entity opposes the claim of the third person. When so filed, the notice is

deemed to satisfy the requirement of this section that an undertaking be filed.

SEC. 98. Section 720.420 of the Code of Civil Procedure is amended to read:

720.420. An appeal may be taken from a judgment given pursuant to Section 720.390.

SEC. 99. Section 871.3 of the Code of Civil Procedure is amended to read:

871.3. A good faith improver may bring an action in the superior court or, subject to Sections 395.9 and 396, may file a cross-complaint in a pending action in the superior or municipal court for relief under this chapter. In every case, the burden is on the good faith improver to establish that he or she is entitled to relief under this chapter, and the degree of negligence of the good faith improver should be taken into account by the court in determining whether the improver acted in good faith and in determining the relief, if any, that is consistent with substantial justice to the parties under the circumstances of the particular case.

SEC. 100. Section 904.1 of the Code of Civil Procedure is amended to read:

904.1. (a) An appeal, other than in a limited civil case, is to the court of appeal. An appeal, other than in a limited civil case, may be taken from any of the following:

(1) From a judgment, except (A) an interlocutory judgment, other than as provided in paragraphs (8), (9), and (11), (B) a judgment of contempt that is made final and conclusive by Section 1222, or (C) a judgment granting or denying a petition for issuance of a writ of mandamus or prohibition directed to a municipal court or the superior court in a county in which there is no municipal court or the judge or judges thereof that relates to a matter pending in the municipal or superior court. However, an appellate court may, in its discretion, review a judgment granting or denying a petition for issuance of a writ of mandamus or prohibition, or a judgment or order for the payment of monetary sanctions, upon petition for an extraordinary writ.

(2) From an order made after a judgment made appealable by paragraph (1).

(3) From an order granting a motion to quash service of summons or granting a motion to stay or dismiss the action on the ground of inconvenient forum.

(4) From an order granting a new trial or denying a motion for judgment notwithstanding the verdict.

(5) From an order discharging or refusing to discharge an attachment or granting a right to attach order.

(6) From an order granting or dissolving an injunction, or refusing to grant or dissolve an injunction.

(7) From an order appointing a receiver.

(8) From an interlocutory judgment, order, or decree, hereafter made or entered in an action to redeem real or personal property from a mortgage thereof, or a lien thereon, determining the right to redeem and directing an accounting.

(9) From an interlocutory judgment in an action for partition determining the rights and interests of the respective parties and directing partition to be made.

(10) From an order made appealable by the provisions of the Probate Code or the Family Code.

(11) From an interlocutory judgment directing payment of monetary sanctions by a party or an attorney for a party if the amount exceeds five thousand dollars ($5,000).

(12) From an order directing payment of monetary sanctions by a party or an attorney for a party if the amount exceeds five thousand dollars ($5,000).

(b) Sanction orders or judgments of five thousand dollars ($5,000) or less against a party or an attorney for a party may be reviewed on an appeal by that party after entry of final judgment in the main action, or, at the discretion of the court of appeal, may be reviewed upon petition for an extraordinary writ.

SEC. 101. Section 904.2 of the Code of Civil Procedure is amended to read:

904.2. An appeal in a limited civil case is to the appellate division of the superior court. An appeal in a limited civil case may be taken from any of the following:

(a) From a judgment, except (1) an interlocutory judgment, or (2) a judgment of contempt that is made final and conclusive by Section 1222.

(b) From an order made after a judgment made appealable by subdivision (a).

(c) From an order changing or refusing to change the place of trial.

(d) From an order granting a motion to quash service of summons or granting a motion to stay or dismiss the action on the ground of inconvenient forum.

(e) From an order granting a new trial or denying a motion for judgment notwithstanding the verdict.

(f) From an order discharging or refusing to discharge an attachment or granting a right to attach order.

(g) From an order granting or dissolving an injunction, or refusing to grant or dissolve an injunction.

(h) From an order appointing a receiver.

SEC. 102. Section 904.5 of the Code of Civil Procedure is amended to read:

904.5. Appeals from the small claims division of a municipal or superior court shall be governed by the Small Claims Act (Chapter 5.5 (commencing with Section 116.110) of Title 1 of Part 1).

SEC. 103. Section 911 of the Code of Civil Procedure is amended to read:

911. A court of appeal may order any case on appeal to a superior court in its district transferred to it for hearing and decision as provided by rules of the Judicial Council when the superior court certifies, or the court of appeal determines, that the transfer appears necessary to secure uniformity of decision or to settle important questions of law.

No case in which there is a right on appeal to a trial anew in the superior court shall be transferred pursuant to this section before a decision in the case becomes final therein.

A court to which any case is transferred pursuant to this section shall have similar power to review any matter and make orders and judgments as the appellate division of the superior court would have in the case, except that if the case was tried anew in the superior court, the court of appeal shall have similar power to review any matter and make orders and judgments as it has in a case appealed pursuant to Section 904.1.

SEC. 104. Section 912 of the Code of Civil Procedure is amended to read:

912. Upon final determination of an appeal by the reviewing court, the clerk of the court shall remit to the trial court a certified copy of the judgment or order of the reviewing court and of its opinion, if any. The clerk of the trial court shall file the certified copy of the judgment and opinion of the reviewing court, shall attach the same to the judgment roll if the appeal was from a judgment, and shall enter a note of the judgment of the reviewing court stating whether the judgment or order appealed from has been affirmed, reversed or modified, in the margin of the original entry of the judgment or order, and also in the register of actions or docket.

SEC. 105. Section 996.430 of the Code of Civil Procedure is amended to read:

996.430. (a) The liability on a bond may be enforced by civil action. Both the principal and the sureties shall be joined as parties to the action.

(b) If the bond was given in an action or proceeding, the action shall be commenced in the court in which the action or proceeding was pending. If the bond was given other than in an action or proceeding, the action shall be commenced in any court of competent jurisdiction, and the amount of damage claimed in the action, not the amount of the bond, determines the jurisdictional classification of the case.

(c) A cause of action on a bond may be transferred and assigned as other causes of action.

SEC. 106. Section 1014 of the Code of Civil Procedure is amended to read:

1014. A defendant appears in an action when the defendant answers, demurs, files a notice of motion to strike, files a notice of

motion to transfer pursuant to Section 396b, moves for reclassification pursuant to Section 395.9, gives the plaintiff written notice of appearance, or when an attorney gives notice of appearance for the defendant. After appearance, a defendant or the defendant's attorney is entitled to notice of all subsequent proceedings of which notice is required to be given. Where a defendant has not appeared, service of notice or papers need not be made upon the defendant.

SEC. 107. Section 1033 of the Code of Civil Procedure is amended to read:

1033. (a) Costs or any portion of claimed costs shall be as determined by the court in its discretion in a case other than a limited civil case in accordance with Section 1034 where the prevailing party recovers a judgment that could have been rendered in a limited civil case.

(b) When a prevailing plaintiff in a limited civil case recovers less than the amount prescribed by law as the maximum limitation upon the jurisdiction of the small claims court, the following shall apply:

(1) When the party could have brought the action in the small claims division but did not do so, the court may, in its discretion, allow or deny costs to the prevailing party, or may allow costs in part in any amount as it deems proper.

(2) When the party could not have brought the action in the small claims court, costs and necessary disbursements shall be limited to the actual cost of the filing fee, the actual cost of service of process, and, when otherwise specifically allowed by law, reasonable attorneys' fees. However, those costs shall only be awarded to the plaintiff if the court is satisfied that prior to the commencement of the action, the plaintiff informed the defendant in writing of the intended legal action against the defendant and that legal action could result in a judgment against the defendant that would include the costs and necessary disbursements allowed by this paragraph.

SEC. 108. Section 1052 of the Code of Civil Procedure is amended to read:

1052. The clerk of a municipal court may keep among the records of the court a register of civil actions in which shall be entered the title of the action commenced in that court, with brief notes under it, from time to time, of all papers filed and proceedings had therein.

SEC. 109. Section 1052.5 of the Code of Civil Procedure is amended to read:

1052.5. In lieu of maintaining a register of actions as described in Section 1052, the clerk of the municipal court may maintain a register of actions by means of photographing, microphotographing, or mechanically or electronically storing the whole content of all papers and records, or any portion thereof, as will constitute a memorandum, necessary to the keeping of a register of actions so long as the completeness and chronological sequence of the register are not disturbed.

All such reproductions shall be placed in convenient, accessible files, and provision shall be made for preserving, examining, and using them.

Any photograph, microphotograph, or photocopy that is made pursuant to this section shall be made in such manner and on such paper as will comply with the minimum standards of quality approved therefor by the National Bureau of Standards.

SEC. 110. Section 1060 of the Code of Civil Procedure is amended to read:

1060. Any person interested under a written instrument, excluding a will or a trust, or under a contract, or who desires a declaration of his or her rights or duties with respect to another, or in respect to, in, over or upon property, or with respect to the location of the natural channel of a watercourse, may, in cases of actual controversy relating to the legal rights and duties of the respective parties, bring an original action or cross-complaint in the superior court or in the municipal court to the extent allowed pursuant to Article 1 (commencing with Section 85) of Chapter 5.1 of Title 1 of Part 1 for a declaration of his or her rights and duties in the premises, including a determination of any question of construction or validity arising under the instrument or contract. He or she may ask for a declaration of rights or duties, either alone or with other relief; and the court may make a binding declaration of these rights or duties, whether or not further relief is or could be claimed at the time. The declaration may be either affirmative or negative in form and effect, and the declaration shall have the force of a final judgment. The declaration may be had before there has been any breach of the obligation in respect to which said declaration is sought.

SEC. 111. Section 1068 of the Code of Civil Procedure is amended to read:

1068. (a) A writ of review may be granted by any court, except a municipal court, when an inferior tribunal, board, or officer, exercising judicial functions, has exceeded the jurisdiction of such tribunal, board, or officer, and there is no appeal, nor, in the judgment of the court, any plain, speedy, and adequate remedy.

(b) The appellate division of the superior court may grant a writ of review directed to the superior court in a limited civil case.

SEC. 112. Section 1085 of the Code of Civil Procedure is amended to read:

1085. (a) A writ of mandate may be issued by any court, except a municipal court, to any inferior tribunal, corporation, board, or person, to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station, or to compel the admission of a party to the use and enjoyment of a right or office to which the party is entitled, and from which the party is unlawfully precluded by such inferior tribunal, corporation, board, or person.

(b) The appellate division of the superior court may grant a writ of mandate directed to the superior court in a limited civil case.

SEC. 113. Section 1103 of the Code of Civil Procedure is amended to read:

1103. (a) A writ of prohibition may be issued by any court, except municipal courts, to an inferior tribunal or to a corporation, board, or person, in all cases where there is not a plain, speedy, and adequate remedy in the ordinary course of law. It is issued upon the verified petition of the person beneficially interested.

(b) The appellate division of the superior court may grant a writ of prohibition directed to the superior court in a limited civil case.

SEC. 114. Section 1134 of the Code of Civil Procedure is amended to read:

1134. In all courts the statement must be filed with the clerk of the court in which the judgment is to be entered, who must endorse upon it, and enter a judgment of the court for the amount confessed with the costs hereinafter set forth. At the time of filing, the plaintiff shall pay as court costs that shall become a part of the judgment the following fees: fifteen dollars ($15) or in a limited civil case ten dollars ($10). No fee shall be collected from the defendant. No fee shall be paid by the clerk of the court in which a confession of judgment is filed for the law library fund nor for services of any court reporter. The statement and affidavit, with the judgment endorsed thereon, becomes the judgment roll.

SEC. 115. Section 1140 of the Code of Civil Procedure is amended to read:

1140. The judgment may be enforced in the same manner as if it had been rendered in an action of the same jurisdictional classification in the same court, and is in the same manner subject to appeal.

SEC. 116. Section 1141.11 of the Code of Civil Procedure is amended to read:

1141.11. (a) In each superior court with 10 or more judges, or 18 or more judges in a county in which there is no municipal court, all at-issue civil actions pending on or filed after the operative date of this chapter, other than a limited civil case, shall be submitted to arbitration, by the presiding judge or the judge designated, under this chapter if the amount in controversy in the opinion of the court will not exceed fifty thousand dollars ($50,000) for each plaintiff, which decision shall not be appealable.

(b) In each superior court with less than 10 judges, or fewer than 18 judges in a county in which there is no municipal court, the court may provide by local rule, when it determines that it is in the best interests of justice, that all at-issue civil actions pending on or filed after the operative date of this chapter, shall be submitted to arbitration by the presiding judge or the judge designated under this chapter if the amount in controversy in the opinion of the court will

not exceed fifty thousand dollars ($50,000) for each plaintiff, which decision shall not be appealable.

(c) Each municipal court, or superior court in a county in which there is no municipal court, may provide by local rule, when it is determined to be in the best interests of justice, that all at-issue limited civil cases pending on or filed after the operative date of this chapter, shall be submitted to arbitration by the presiding judge or the judge designated under this chapter. This section does not apply to any action in small claims court, or to any action maintained pursuant to Section 1781 of the Civil Code or Section 1161 of this code.

(d) In each court that has adopted judicial arbitration pursuant to subdivision (c), all limited civil cases pending on or after July 1, 1990, that involve a claim for money damages against a single defendant as a result of a motor vehicle collision, except those heard in the small claims division, shall be submitted to arbitration within 120 days of the filing of the defendant's answer to the complaint (except as may be extended by the court for good cause) before an arbitrator selected by the court, subject to disqualification for cause as specified in Sections 170.1 and 170.6.

The court may provide by local rule for the voluntary or mandatory use of case questionnaires, established under Section 93, in any proceeding subject to these provisions. Where local rules provide for the use of case questionnaires, the questionnaires shall be exchanged by the parties upon the defendant's answer and completed and returned within 60 days.

For the purposes of this subdivision, the term "single defendant" means (1) an individual defendant, whether a person or an entity, (2) two or more persons covered by the same insurance policy applicable to the motor vehicle collision, or (3) two or more persons residing in the same household when no insurance policy exists that is applicable to the motor vehicle collision. The naming of one or more cross-defendants, not a plaintiff, shall constitute a multiple-defendant case not subject to the provisions of this subdivision.

(e) No local rule of a superior court providing for judicial arbitration may dispense with the conference required pursuant to Section 1141.16.

SEC. 117. Section 1141.12 of the Code of Civil Procedure is amended to read:

1141.12. (a) In each superior court in which arbitration may be had pursuant to subdivision (a) or (b) of Section 1141.11, upon stipulation of the parties, any at-issue civil actions shall be submitted to arbitration regardless of the amount in controversy.

(b) In all other superior and municipal courts, the Judicial Council shall provide by rule for a uniform system of arbitration of the following causes:

(i) Any cause upon stipulation of the parties.

(ii) Upon filing of an election by the plaintiff, any cause in which the plaintiff agrees that the arbitration award shall not exceed the amount in controversy as specified in Section 1141.11.

(c) Any election by a plaintiff shall be filed no sooner than the filing of the at-issue memorandum, and no later than 90 days before trial, or at a later time if permitted by the court.

SEC. 118. Section 1161.2 of the Code of Civil Procedure is amended to read:

1161.2. (a) Except as provided in subdivision (g), in any case filed under this chapter as a limited civil case, the court clerk shall not allow access to the court file, index, register of actions, or other court records until 60 days following the date the complaint is filed, except pursuant to an ex parte court order upon a showing of good cause therefor by any person including, but not limited to, a newspaper publisher. However, the clerk of the court shall allow access to the court file to a party in the action, an attorney of a party in the action, or any other person who (1) provides to the clerk the names of at least one plaintiff, one defendant, and the address, including the apartment, unit, or space number, if applicable, of the subject premises, or (2) provides to the clerk the name of one of the parties or the case number and can establish through proper identification that he or she resides at the subject premises.

(b) For purposes of this section, "good cause" includes, but is not limited to, the gathering of newsworthy facts by a person described in Section 1070 of the Evidence Code. It is the intent of the Legislature that a simple procedure be established to request the ex parte order described in subdivision (a).

(c) Except as provided in subdivision (g), upon the filing of any case so restricted, the court clerk shall mail notice to each defendant named in the action. The notice shall be mailed to the address provided in the complaint. The notice shall contain a statement that an unlawful detainer complaint (eviction action) has been filed naming that party as a defendant, and that access to the court file will be delayed for 60 days except to a party, an attorney for one of the parties, or any other person who (1) provides to the clerk the names of at least one plaintiff and one defendant in the action and provides to the clerk the address, including any applicable apartment, unit, or space number, of the subject premises, or (2) provides to the clerk the name of one of the parties in the action or the case number and can establish through proper identification that he or she lives at the subject premises. The notice shall also contain a statement that access to the court index, register of actions, or other records is not permitted until 60 days after the complaint is filed, except pursuant to an ex parte order upon a showing of good cause therefor. The notice shall contain on its face the name and phone number of the county bar association and the name and phone number of an office funded by the federal Legal Services Corporation that provides legal services to low-income persons in the county in which the action is

filed. The notice shall state that these numbers may be called for legal advice regarding the case. The notice shall be issued between 24 and 48 hours of the filing of the complaint, excluding weekends and holidays. One copy of the notice shall be addressed to "all occupants" and mailed separately to the subject premises. The notice shall not constitute service of the summons and complaint.

(d) Notwithstanding any other provision of law, the court shall, upon adoption of a resolution by the board of supervisors requiring such a fee, charge an additional fee for filing a first appearance by the plaintiff in an amount equal in the aggregate to the actual cost of complying with this section, but that shall not exceed a maximum of four dollars ($4). This fee shall be included as part of the total filing fee for actions filed under this chapter. Any such board resolution in effect on January 1, 1994, shall remain in effect until it is repealed.

(e) A municipal court or the superior court in a county in which there is no municipal court, after consultation with local associations of rental property owners, tenant groups, and providers of legal services to tenants, may exempt itself from the operation of this section upon a finding that unscrupulous eviction defense services are not a substantial problem in the judicial district. The court shall review the finding every 12 months. An exempt court shall not charge the additional fee authorized in subdivision (d).

(f) The Judicial Council shall examine the extent to which requests for access to files pursuant to an ex parte order under subdivision (a) are granted or denied, and if denied, the reason for the denial of access.

(g) This section shall not apply to a case that seeks to terminate a mobilehome park tenancy if the statement of the character of the proceeding in the caption of the complaint clearly indicates that the complaint seeks termination of a mobilehome park tenancy.

SEC. 119. Section 1167.2 of the Code of Civil Procedure is amended to read:

1167.2. (a) (1) There is hereby established a pilot project in the Los Angeles Municipal Court downtown courthouse for the Los Angeles Judicial District, for those cases within the venue of the Central Division, and the municipal courts for the County of San Bernardino. Nothing herein shall be construed to preclude those municipal courts that were implementing the pilot project as of January 1, 1996, from continuing to do so subject to the provisions of this section as amended by Assembly Bill 2966 of the 1995–96 Regular Session. Nothing herein shall preclude other courts from opting to implement the pilot project in a limited civil case.

The pilot project shall be considered successful if delays and abuses in the unlawful detainer system are reduced, due process protections are maintained for all parties, and significant administrative burdens are not imposed on the courts. Failure to meet one or more of the numerical measurements of success shall not be interpreted as a lack of success of the project if, in the Judicial Council's view, the totality

of circumstances reflect success of the project. Measurements of success shall include:

(A) A 50-percent reduction of time from filing an unlawful detainer action to regaining possession of property in cases in which a deposit demand is made as compared to cases in which a deposit demand is not made. The measurement of this reduction shall exclude any action to obtain possession of any nonresidential premises and any action in which the trial was held on the date set for the pretrial hearing and the defendant was not represented by counsel at this trial.

(B) No more than 5 percent of the unlawful detainer cases are appealed in which a demand for prospective rent is made. The measurement of this percentage shall exclude any action to obtain possession of a nonresidential premises and any action in which the trial was held on the date set for the pretrial hearing and the defendant was not represented by counsel at this trial.

(C) A 40-percent reduction of total administrative and judicial time for the courts when disposing of unlawful detainer actions in which a deposit demand is made as compared to cases in which a deposit demand is not made.

(D) No increase in costs to the courts in cases in which a deposit demand is made as compared to cases in which no deposit demand is made.

(E) Less than 1 percent of the unlawful detainer cases in which a deposit demand was made involved property subject to an outstanding violation.

(2) Criteria to be considered for determining the success of the pilot project shall include, but not be limited to, all of the following:

(A) The time for disposition of unlawful detainer cases using the pretrial rent deposit procedure as compared to cases under subdivision 2 of Section 1161 from previous years for which records are available and other unlawful detainer cases in the same time period, in which a deposit is not demanded. However, this comparison shall exclude any action to obtain possession of any nonresidential premises and any action in which the trial was held on the date set for the pretrial hearing and the defendant was not represented by counsel at this trial.

(B) The percentage of hearings that are contested as compared to failures of parties to appear at the hearing, the number of deposits ordered to be made after a hearing, the number of deposits actually made, and the number of occasions the court found a substantial conflict as to material fact or facts.

(C) The effect of the procedure on the ability of the parties to prepare and present a case at the hearing.

(D) Analysis of compliance with subdivision (d) using random samples that are sufficient to produce statistically valid data.

(E) Assessment by the courts as to the efficiency of the procedure, and whether there was an overall increase or decrease in the administrative burden of dealing with unlawful detainer cases.

(F) The number of cases in which trials are held at the time and date set for the pretrial hearing and the disposition of the cases.

Each court participating in the pilot project shall develop procedures to survey participants in the process and to gather data on its experience with the process. Survey participants shall include, but not be limited to, members of the judiciary, court administration, court clerks, counsel for plaintiffs and defendants, landlords, tenants, sheriffs, and marshals.

The presiding judges of participating courts shall report on the success of the pilot project to the Judicial Council on or before September 30, 1998, and the Judicial Council shall report to the Legislature on or before December 31, 1998.

(b) (1) In any action for unlawful detainer brought under subdivision (2) of Section 1161, the plaintiff may make a demand for a pretrial prospective rent deposit, provided the plaintiff has alleged in the body of the unlawful detainer complaint that no citation of a type described in subdivision (c) is outstanding as of the date the complaint is filed. The demand shall be made in the body of the unlawful detainer complaint, on the first page thereof immediately under the case number, and on the summons issued by the court.

(2) The summons and complaint shall be accompanied by a reply form. The reply form shall be prepared by the Judicial Council to allow the defendant to advise the court and the plaintiff that the defendant denies the allegations of the unlawful detainer complaint and intends to appear and defend the action. The information to be contained in the form shall include, but not be limited to, the following:

(A) A statement that in order for the defendant to protect his or her rights, the form should be completed and returned to the court immediately, but in no event later than five days from receipt of the summons and complaint. The form shall be returned to the court by personal delivery or by registered or certified mail, return receipt requested, postmarked within five days from receipt of the summons and complaint.

(B) A statement that, if the form is not returned to the court in the time and manner prescribed herein, the defendant shall be required to deposit with the court the prospective rent as defined in subdivision (e) by the date of the hearing in order to preserve the right to have a trial of this matter.

(C) A statement that if the defendant does not return the form to the court as prescribed herein and subsequently fails to deposit the amount of prospective rent as defined in subdivision (d) up to and including the date of the hearing, the court shall order judgment for possession of the premises to be entered in favor of the plaintiff at the pretrial hearing.

(3) Upon the filing of the proof of service of the summons and complaint for unlawful detainer containing a demand for a pretrial prospective rent deposit, the clerk of the court shall set a pretrial hearing date no less than eight nor more than 13 days from the filing of the proof of service, and give notice of that date to all parties by first-class mail if the plaintiff pays the fee required by Section 72055 of the Government Code, plus an additional sum in an amount set by the court to cover actual costs of the court associated with the procedure established by this section. The proceeds from this additional fee shall be deposited with the county treasurer and, upon appropriation, be available solely to the court and the county in which the court is located and shall be used exclusively for costs associated with this procedure. If the court provides procedures for holding a trial on the same date as the day scheduled for the pretrial hearing, the court shall use a Judicial Council form to inform defendants of the date, time, and place of the pretrial hearing. The form shall include a statement that is substantially in the following form:

"If you are represented by counsel on the date set for the pretrial hearing, the court may ask you to waive your right to the pretrial hearing and proceed directly to trial. If you agree, the trial will begin and you will be expected to have all your evidence and witnesses present in the courtroom. You should seriously consider whether it is in your interest to waive your right to a pretrial hearing. If you agree to waive your right to a pretrial hearing and lose at trial, judgment will be entered against you for eviction and money damages. Whereas, if you lose your pretrial hearing and fail to make the pretrial rent deposit within two court days, the court can only enter judgment for eviction without any money damages."

(c) (1) At the pretrial hearing, the court shall determine whether a substantial conflict exists as to a material fact or facts relevant to the unlawful detainer for purposes of requiring the defendant to deposit with the clerk of the court prospective rent as defined in subdivision (e) as a condition of continuing to trial. If at the pretrial hearing the court determines, based upon the written declarations or oral testimony of the parties, that (A) the plaintiff is the landlord of the premises, the defendant failed to pay contract rent, the defendant was properly served with a three-day notice, and the defendant failed to tender the rent or quit the premises, and (B) no substantial conflict exists as to a material fact or facts relevant to the unlawful detainer after considering any written or oral answer to the unlawful detainer complaint made by the defendant and any and all affirmative defenses offered by the defendant, and considering any oral testimony and written declarations presented by all of the parties, then the court shall have the discretion to order the defendant to deposit, with the clerk of the court, prospective rent as defined in

subdivision (e). If the court orders a deposit of prospective rent and if the defendant fails to deposit the prospective rent within two court days from the date of the hearing, judgment for the plaintiff for possession of the premises shall be entered and a writ of possession for the premises shall be issued forthwith. If the defendant has not returned the reply form as described in paragraph (2) of subdivision (b) in the time and manner required, any deposit of prospective rent ordered by the court shall be made by the date of the hearing. If a defendant has not returned the reply form and then fails to deposit the prospective rent on the day of the hearing, judgment for the plaintiff for possession of the premises shall be entered and a writ of possession shall be issued forthwith. Upon entry of judgment for possession of the premises for the plaintiff pursuant to this subdivision, the court shall dismiss any claim for money relief without prejudice.

(2) For purposes of the pretrial hearing held pursuant to paragraph (1), the parties shall have the right to offer declarations, affidavits, and documentary evidence in addition to oral testimony of the parties, but no witnesses other than the parties may be called to testify. The court shall consult the parties to ascertain whether there is a substantial conflict as to a material fact or facts relevant to the unlawful detainer. The pretrial hearing of the case shall be informal, the object being to dispense justice promptly, fairly, and inexpensively. Except as provided in paragraph (3), for the purposes of the pilot project in Los Angeles County, no attorney may take part in the conduct of the pretrial hearing unless the attorney is appearing to maintain an action (A) by or against himself or herself, (B) by or against a partnership in which he or she is a general partner and in which all the partners are attorneys, or (C) by a corporation. If an attorney appears at the pretrial hearing to maintain an action as authorized by this paragraph, an attorney may appear for the opposing party in this action.

(3) Notwithstanding whether the defendant has returned the reply form pursuant to paragraph (2) of subdivision (b), a defendant may respond to the summons and complaint with an oral answer at the pretrial hearing or by written answer, motion, or demurrer. An oral answer shall be reduced to a writing by the court clerk, recorded electronically, or recorded by a court reporter. The court, in issuing its decision, shall make findings as to the matters specified in paragraph (1) of subdivision (b), including any defenses. The decision and findings shall be reduced to a writing. If the defendant responds to the unlawful detainer by demurrer or motion, this motion or demurrer shall be filed and served pursuant to Sections 1167 and 1167.3 and shall be heard and decided at the pretrial hearing held pursuant to this section. Notwithstanding paragraph (2) of subdivision (c), attorneys may appear in any county for parties prosecuting or contesting a demurrer or motion. Notwithstanding Section 1005, papers opposing the defendant's motion or demurrer

may be filed and personally served no later than one day prior to the day appointed for the hearing. If the defendant fails to respond to the unlawful detainer by written answer, motion, demurrer, or oral answer at the pretrial hearing, the court shall order judgment for possession of the premises to be entered in favor of the plaintiff forthwith at the pretrial hearing.

(4) A defendant who is represented by counsel at the pretrial hearing may be asked to stipulate to holding the trial on the date set for the pretrial hearing where the court has advised the defendant of the following in the summons: (1) that the court may ask the defendant to stipulate to holding the trial on the same date as the pretrial hearing if the defendant is represented by counsel; (2) that he or she has the right to post a deposit and have the trial set at a later date if the court determines that a deposit is required at the pretrial hearing; (3) that if the deposit is not made, judgment for possession can only be entered against the defendant, and (4) that if trial is held, judgments for money and possession can be entered against the defendant.

In no case shall the trial be held on the same date selected for the pretrial hearing unless the defendant is represented by counsel and has been given notice as provided in paragraph (4). These provisions are nonwaivable.

(d) No deposit of prospective rent as defined in this section shall be required if the defendant has paid, or deposited with the court, all rent through the month in which the action is filed. No deposit of rent pursuant to this section shall be required if the action involves premises as to which, as of the date the complaint was filed, there was an outstanding citation issued by a state or local government agency for violations of law pertaining to health, safety, housing, building, or fire standards.

(e) "Prospective rent," for purposes of this section, means up to 15 days' prospective rent not to exceed five hundred dollars ($500). The prospective rent shall be calculated on a prorated basis utilizing a 30-day rental period and the lowest monthly rent charged for the premises during the prior six months of the defendant's occupancy. Any deposit made by the defendant pursuant to this section shall be deposited with the clerk, by cash, cashier's check, or money order made payable to the clerk. Receipt of the deposit shall be acknowledged in writing and deposited and retained by the clerk pursuant to Section 24353 of the Government Code until further order of the court. The receipt and amount of a deposit of prospective rent shall be included in the order of the court at the conclusion of the pretrial hearing.

(f) If at trial the court determines that a breach of the warranty of habitability has occurred, that the defendant, or his or her guests or invitees did not cause the breach of this warranty, that the breach of this warranty is sufficient to diminish the value of the premises in an amount greater than 60 percent of the contract rent, and that the

defendant had given the owner notice to repair or eliminate the breach, the court shall order the entire amount of prospective rent deposited by the defendant pursuant to this section returned to the defendant. In this case, the obligation of payment of past rent for the period covered by the eviction notice shall be extinguished. In order to remain in the premises, the defendant shall pay the reduced rent from the time of trial until the defect is cured. The rights and remedies in this paragraph are in addition to any other rights and remedies relating to the habitability of dwelling units.

(g) Notwithstanding paragraph (1) of subdivision (c), any deposit made by the defendant pursuant to this section shall be awarded to the party entitled thereto by the trial court. The defendant shall be given credit to the extent of the deposit against any money judgment ordered against the defendant in a subsequent action.

(h) This section does not apply to actions for possession of a mobilehome or manufactured home, as those terms are defined in subdivision (a) of Section 1161a, and does not apply to actions for possession of real property in a mobilehome park subject to the Mobilehome Residency Law (Chapter 2.5 (commencing with Section 798) of Title 2 of Part 2 of Division 2 of the Civil Code), or to a manufactured housing community, as defined in Section 18801 of the Health and Safety Code.

(i) Section 473 shall apply to this section.

(j) This section shall become inoperative on December 31, 1998, and shall be repealed on July 1, 1999, unless a later enacted statute, which is enacted before July 1, 1999, deletes or extends that date.

SEC. 120. Section 1171 of the Code of Civil Procedure is amended to read:

1171. Whenever an issue of fact is presented by the pleadings, it must be tried by a jury, unless such jury be waived as in other cases. The jury shall be formed in the same manner as other trial juries in an action of the same jurisdictional classification in the Court in which the action is pending.

SEC. 121. Section 1206 of the Code of Civil Procedure is amended to read:

1206. Upon the levy under a writ of attachment or execution not founded upon a claim for labor, any miner, mechanic, salesman, servant, clerk, laborer or other person who has performed work or rendered personal services for the defendant within 90 days prior to the levy may file a verified statement of the claim therefor with the officer executing the writ, file a copy thereof with the court that issued the writ, and give copies thereof, containing his or her address, to the plaintiff and the defendant, or any attorney, clerk or agent representing them, or mail copies to them by registered mail at their last known address, return of which by the post office undelivered shall be deemed a sufficient service if no better address is available, and that claim, not exceeding nine hundred dollars ($900), unless disputed, must be paid by the officer, immediately upon the

expiration of the time for dispute of the claim as prescribed in Section 1207, from the proceeds of the levy remaining in the officer's hands at the time of the filing of the statement or collectible by the officer on the basis of the writ.

The court issuing the writ must make a notation on its docket of every preferred labor claim of which it receives a copy and must endorse on any writ of execution or abstract of judgment issued subsequently in the case that it is issued subject to the rights of a preferred labor claimant or claimants thereunder and giving the names and amounts of all preferred labor claims of which it has notice. In levying under any writ of execution the officer making the levy shall include in the amount due under the execution any and all preferred labor claims that have been filed in the action and of which the officer has notice, except any claims that may have been finally disallowed by the court under the procedure provided for herein and of which disallowance the officer has actual notice. The amount due on preferred labor claims that have not been finally disallowed by the court shall be considered a part of the sum due under any writ of attachment or execution in augmentation of the amount thereof and it shall be the duty of any person, firm, association or corporation on whom a writ of attachment or execution is levied to immediately pay to the levying officer the amount of the preferred labor claims, out of any money belonging to the defendant in the action, before paying the principal sum called for in the writ.

If any claim is disputed within the time, and in the manner prescribed in Section 1207, and a copy of the dispute is mailed by registered mail to the claimant or the claimant's attorney at the address given in the statement of claim and the registry receipt is attached to the original of the dispute when it is filed with the levying officer, or is handed to the claimant or the claimant's attorney, the claimant, or the claimant's assignee, must within 10 days after the copy is deposited in the mail or is handed to the claimant or the claimant's attorney petition the court having jurisdiction of the action on which the writ is based, for a hearing before it to determine the claim for priority, or the claim to priority is barred. If more than one attachment or execution is involved, the petition shall be filed in the court having jurisdiction over the senior attachment or execution. The hearing shall be held within 20 days from the filing of the petition unless the court continues it for good cause. Ten days' notice of the hearing shall be given by the petitioner to the plaintiff and the defendant, and to all parties claiming an interest in the property, or their attorneys. The notice may be informal and need specify merely the name of the court, names of the principal parties to the senior attachment or execution and name of the wage claimant or claimants on whose behalf it is filed but shall specify that the hearing is for the purpose of determining the claim for priority. The plaintiff or the defendant, or any other party claiming an interest may contest the amount or validity of the claim in spite of any confession

of judgment or failure to appear or to contest the claim on the part of any other person.

There shall be no cost for filing or hearing the petition and the hearing on the petition shall be informal but all parties testifying must be sworn. Any claimant may appear on the claimant's own behalf at the hearing and may call and examine witnesses to substantiate his or her claim. An appeal may be taken from a judgment in a proceeding under this section in the manner provided for appeals from judgments of the court where the proceeding is had, in an action of the same jurisdictional classification.

The officer shall retain in possession until the determination of the claim for priority so much of the proceeds of the writ as may be necessary to satisfy the claim, and if the claim for priority is allowed, the officer shall pay the amount due, including the claimant's cost of suit, from such proceeds, immediately after the order allowing the claim becomes final.

SEC. 122. Section 1281.5 of the Code of Civil Procedure is amended to read:

1281.5. (a) Any person who proceeds to record and enforce a claim of lien by commencement of an action pursuant to Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code, shall not thereby waive any right of arbitration which that person may have pursuant to a written agreement to arbitrate, if, in filing an action to enforce the claim of lien, the claimant at the same time presents to the court an application that the action be stayed pending the arbitration of any issue, question, or dispute which is claimed to be arbitrable under the agreement and which is relevant to the action to enforce the claim of lien. In a county in which there is a municipal court, the applicant may join with the application for the stay, pending arbitration, a claim of lien otherwise within the jurisdiction of the municipal court.

(b) The failure of a defendant to file a petition pursuant to Section 1281.2 at or before the time he or she answers the complaint filed pursuant to subdivision (a) shall constitute a waiver of that party's right to compel arbitration.

SEC. 123. Section 1283.05 of the Code of Civil Procedure is amended to read:

1283.05. To the extent provided in Section 1283.1 depositions may be taken and discovery obtained in arbitration proceedings as follows:

(a) After the appointment of the arbitrator or arbitrators, the parties to the arbitration shall have the right to take depositions and to obtain discovery regarding the subject matter of the arbitration, and, to that end, to use and exercise all of the same rights, remedies, and procedures, and be subject to all of the same duties, liabilities, and obligations in the arbitration with respect to the subject matter thereof, as provided in Chapter 2 (commencing with Section 1985) of, and Article 3 (commencing with Section 2016) of Chapter 3 of,

Title 3 of Part 4 of this code, as if the subject matter of the arbitration were pending before a superior court of this state in a civil action other than a limited civil case, subject to the limitations as to depositions set forth in subdivision (e) of this section.

(b) The arbitrator or arbitrators themselves shall have power, in addition to the power of determining the merits of the arbitration, to enforce the rights, remedies, procedures, duties, liabilities, and obligations of discovery by the imposition of the same terms, conditions, consequences, liabilities, sanctions, and penalties as can be or may be imposed in like circumstances in a civil action by a superior court of this state under the provisions of this code, except the power to order the arrest or imprisonment of a person.

(c) The arbitrator or arbitrators may consider, determine, and make such orders imposing such terms, conditions, consequences, liabilities, sanctions, and penalties, whenever necessary or appropriate at any time or stage in the course of the arbitration, and such orders shall be as conclusive, final, and enforceable as an arbitration award on the merits, if the making of any such order that is equivalent to an award or correction of an award is subject to the same conditions, if any, as are applicable to the making of an award or correction of an award.

(d) For the purpose of enforcing the duty to make discovery, to produce evidence or information, including books and records, and to produce persons to testify at a deposition or at a hearing, and to impose terms, conditions, consequences, liabilities, sanctions, and penalties upon a party for violation of any such duty, such party shall be deemed to include every affiliate of such party as defined in this section. For such purpose:

(1) The personnel of every such affiliate shall be deemed to be the officers, directors, managing agents, agents, and employees of such party to the same degree as each of them, respectively, bears such status to such affiliate; and

(2) The files, books, and records of every such affiliate shall be deemed to be in the possession and control of, and capable of production by, such party. As used in this section, "affiliate" of the party to the arbitration means and includes any party or person for whose immediate benefit the action or proceeding is prosecuted or defended, or an officer, director, superintendent, member, agent, employee, or managing agent of such party or person.

(e) Depositions for discovery shall not be taken unless leave to do so is first granted by the arbitrator or arbitrators.

SEC. 124. Section 1287.4 of the Code of Civil Procedure is amended to read:

1287.4. If an award is confirmed, judgment shall be entered in conformity therewith. The judgment so entered has the same force and effect as, and is subject to all the provisions of law relating to, a judgment in a civil action of the same jurisdictional classification; and

it may be enforced like any other judgment of the court in which it is entered, in an action of the same jurisdictional classification.

SEC. 125. Section 1710.20 of the Code of Civil Procedure is amended to read:

1710.20. (a) In a county in which there is a municipal court, the application shall be filed in a municipal court in all cases in which the sister state judgment amounts to twenty-five thousand dollars ($25,000) or less. The application shall be filed in a superior court in all other cases.

(b) Subject to the power of the court to transfer proceedings under this chapter pursuant to Title 4 (commencing with Section 392) of Part 2, the proper county for the filing of an application is any of the following:

(1) The county in which any judgment debtor resides.

(2) If no judgment debtor is a resident, any county in this state.

(c) A case in which the sister state judgment amounts to twenty-five thousand dollars ($25,000) or less is a limited civil case.

SEC. 126. Section 1775.1 of the Code of Civil Procedure is amended to read:

1775.1. (a) As used in this title:

(1) "Court" means a superior court or municipal court.

(2) "Mediation" means a process in which a neutral person or persons facilitate communication between the disputants to assist them in reaching a mutually acceptable agreement.

(b) Unless otherwise specified in this title or ordered by the court, any act to be performed by a party may also be performed by his or her counsel of record.

SEC. 127. Section 2015.3 of the Code of Civil Procedure is amended to read:

2015.3. The certificate of a sheriff, marshal, or the clerk of the superior or municipal court, has the same force and effect as his or her affidavit.

SEC. 128. Section 44944 of the Education Code is amended to read:

44944. (a) In a dismissal or suspension proceeding initiated pursuant to Section 44934, if a hearing is requested by the employee, the hearing shall be commenced within 60 days from the date of the employee's demand for a hearing. The hearing shall be initiated, conducted, and a decision made in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. However, the hearing date shall be established after consultation with the employee and the governing board, or their representatives, and the Commission on Professional Competence shall have all the power granted to an agency in that chapter, except that the right of discovery of the parties shall not be limited to those matters set forth in Section 11507.6 of the Government Code but shall include the rights and duties of any party in a civil action brought in a superior court under Article 3

(commencing with Section 2016) of Chapter 3 of Title 4 of Part 4 of the Code of Civil Procedure. Notwithstanding any provision to the contrary, and except for the taking of oral depositions, no discovery shall occur later than 30 calendar days after the employee is served with a copy of the accusation pursuant to Section 11505 of the Government Code. In all cases, discovery shall be completed prior to seven calendar days before the date upon which the hearing commences. If any continuance is granted pursuant to Section 11524 of the Government Code, the time limitation for commencement of the hearing as provided in this subdivision shall be extended for a period of time equal to such continuance. However, the extension shall not include that period of time attributable to an unlawful refusal by either party to allow the discovery provided for in this section.

If the right of discovery granted under the preceding paragraph is denied by either the employee or the governing board, all the remedies in Section 2034 of the Code of Civil Procedure shall be available to the party seeking discovery and the court of proper jurisdiction, to entertain his or her motion, shall be the superior court of the county in which the hearing will be held.

The time periods in this section and of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code and of Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure shall not be applied so as to deny discovery in a hearing conducted pursuant to this section.

The superior court of the county in which the hearing will be held may, upon motion of the party seeking discovery, suspend the hearing so as to comply with the requirement of the preceding paragraph.

No witness shall be permitted to testify at the hearing except upon oath or affirmation. No testimony shall be given or evidence introduced relating to matters which occurred more than four years prior to the date of the filing of the notice. Evidence of records regularly kept by the governing board concerning the employee may be introduced, but no decision relating to the dismissal or suspension of any employee shall be made based on charges or evidence of any nature relating to matters occurring more than four years prior to the filing of the notice.

(b) The hearing provided for in this section shall be conducted by a Commission on Professional Competence. One member of the commission shall be selected by the employee, one member shall be selected by the governing board, and one member shall be an administrative law judge of the Office of Administrative Hearings who shall be chairperson and a voting member of the commission and shall be responsible for assuring that the legal rights of the parties are protected at the hearing. If either the governing board or the employee for any reason fails to select a commission member at least

seven calendar days prior to the date of the hearing, the failure shall constitute a waiver of the right to selection, and the county board of education or its specific designee shall immediately make the selection. When the county board of education is also the governing board of the school district or has by statute been granted the powers of a governing board, the selection shall be made by the Superintendent of Public Instruction, who shall be reimbursed by the school district for all costs incident to the selection.

The member selected by the governing board and the member selected by the employee shall not be related to the employee and shall not be employees of the district initiating the dismissal or suspension and shall hold a currently valid credential and have at least five years' experience within the past 10 years in the discipline of the employee.

(c) The decision of the Commission on Professional Competence shall be made by a majority vote, and the commission shall prepare a written decision containing findings of fact, determinations of issues, and a disposition which shall be, solely:

(1) That the employee should be dismissed.

(2) That the employee should be suspended for a specific period of time without pay.

(3) That the employee should not be dismissed or suspended.

The decision of the Commission on Professional Competence that the employee should not be dismissed or suspended shall not be based on nonsubstantive procedural errors committed by the school district or governing board unless the errors are prejudicial errors.

The commission shall not have the power to dispose of the charge of dismissal by imposing probation or other alternative sanctions. The imposition of suspension pursuant to paragraph (2) shall be available only in a suspension proceeding authorized pursuant to subdivision (b) of Section 44932 or Section 44933.

The decision of the Commission on Professional Competence shall be deemed to be the final decision of the governing board.

The board may adopt from time to time such rules and procedures not inconsistent with provisions of this section as may be necessary to effectuate this section.

The governing board and the employee shall have the right to be represented by counsel.

(d) (1) If the member selected by the governing board or the member selected by the employee is employed by any school district in this state the member shall, during any service on a Commission on Professional Competence, continue to receive salary, fringe benefits, accumulated sick leave, and other leaves and benefits from the district in which the member is employed, but shall receive no additional compensation or honorariums for service on the commission.

(2) If service on a Commission on Professional Competence occurs during summer recess or vacation periods, the member shall

receive compensation proportionate to that received during the current or immediately preceding contract period from the member's employing district, whichever amount is greater.

(e) If the Commission on Professional Competence determines that the employee should be dismissed or suspended, the governing board and the employee shall share equally the expenses of the hearing, including the cost of the administrative law judge. The state shall pay any costs incurred under paragraph (2) of subdivision (d), the reasonable expenses, as determined by the administrative law judge, of the member selected by the governing board and the member selected by the employee, including, but not limited to payments or obligations incurred for travel, meals, and lodging, and the cost of the substitute or substitutes, if any, for the member selected by the governing board and the member selected by the employee. The Controller shall pay all claims submitted pursuant to this paragraph from the General Fund, and may prescribe reasonable rules, regulations, and forms for the submission of the claims. The employee and the governing board shall pay their own attorney fees.

If the Commission on Professional Competence determines that the employee should not be dismissed or suspended, the governing board shall pay the expenses of the hearing, including the cost of the administrative law judge, any costs incurred under paragraph (2) of subdivision (d), the reasonable expenses, as determined by the administrative law judge, of the member selected by the governing board and the member selected by the employee, including, but not limited to, payments or obligations incurred for travel, meals, and lodging, the cost of the substitute or substitutes, if any, for the member selected by the governing board and the member selected by the employee, and reasonable attorney fees incurred by the employee.

As used in this section, "reasonable expenses" shall not be deemed "compensation" within the meaning of subdivision (d).

If either the governing board or the employee petitions a court of competent jurisdiction for review of the decision of the commission, the payment of expenses to members of the commission required by this subdivision shall not be stayed.

In the event that the decision of the commission is finally reversed or vacated by a court of competent jurisdiction, then either the state, having paid the commission members' expenses, shall be entitled to reimbursement from the governing board for those expenses, or the governing board, having paid the expenses, shall be entitled to reimbursement from the state.

Additionally, either the employee, having paid a portion of the expenses of the hearing, including the cost of the administrative law judge, shall be entitled to reimbursement from the governing board for the expenses, or the governing board, having paid its portion and the employee's portion of the expenses of the hearing, including the

cost of the administrative law judge, shall be entitled to reimbursement from the employee for that portion of the expenses.

(f) The hearing provided for in this section shall be conducted in a place selected by agreement among the members of the commission. In the absence of agreement, the place shall be selected by the administrative law judge.

SEC. 129. Section 45312 of the Education Code is amended to read:

45312. The commission may authorize a hearing officer or other representative to conduct any hearing or investigation which the commission itself is authorized by this article to conduct. Any such authorized person conducting such hearing or investigation may administer oaths, subpoena and require the attendance of witnesses and the production of books or papers, and cause the depositions of witnesses to be taken in the manner prescribed by law for like depositions in civil cases in the superior court of this state under Article 3 (commencing with Section 2016) of Chapter 3 of Title 4 of Part 4 of the Code of Civil Procedure. The commission may instruct such authorized representative to present findings or recommendations. The commission may accept, reject or amend any of the findings or recommendations of the said authorized representative. Any rejection or amendment of findings or recommendations shall be based either on a review of the transcript of the hearing or investigation or upon the results of such supplementary hearing or investigation as the commission may order.

The commission may employ by contract or as professional experts or otherwise any such hearing officers or other representatives and may adopt and amend such rules and procedures as may be necessary to effectuate this section.

SEC. 130. Section 48294 of the Education Code is amended to read:

48294. All fines paid as penalties for the violation of any of the provisions of this chapter shall, when collected or received, be paid over by the court or officer receiving them to the treasurer of the city, county, or city and county, in which the offense was committed, to be placed to the credit of the school fund of the school district in which the offense was committed. Such moneys shall be used to support the activities of the school attendance review board prescribed by Section 48291 and the parent education and counseling program prescribed by Section 48293.

SEC. 131. Section 48295 of the Education Code is amended to read:

48295. Any judge of a municipal court, in the judicial district in which the school district is located, or in which the offense is committed, or judge of the superior court in a county in which there is no municipal court, has jurisdiction of offenses committed under this article. A juvenile court has jurisdiction of a violation of Section

48293 as provided by Section 601.4 of the Welfare and Institutions Code.

SEC. 132. Section 87675 of the Education Code is amended to read:

87675. The arbitrator shall conduct proceedings in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, except that the right of discovery of the parties shall not be limited to those matters set forth in Section 11507.6 of the Government Code but shall include the rights and duties of any party in a civil action brought in a superior court under Article 3 (commencing with Section 2016) of Chapter 3 of Title 4 of Part 4 of the Code of Civil Procedure. In all cases, discovery shall be completed prior to one week before the date set for hearing. The arbitrator shall determine whether there is cause to dismiss or penalize the employee. If the arbitrator finds cause, the arbitrator shall determine whether the employee shall be dismissed, the precise penalty to be imposed, and whether the decision should be imposed immediately or postponed pursuant to Section 87672.

No witness shall be permitted to testify at the hearing except upon oath or affirmation. No testimony shall be given or evidence introduced relating to matters that occurred more than four years prior to the date of the filing of the notice. Evidence of records regularly kept by the governing board concerning the employee may be introduced, but no decision relating to the dismissal or suspension of any employee shall be made based on charges or evidence of any nature relating to matters occurring more than four years prior to the filing of the notice.

SEC. 133. Section 87679 of the Education Code is amended to read:

87679. The administrative law judge shall conduct proceedings in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, except that the right of discovery of the parties shall not be limited to those matters set forth in Section 11507.6 of the Government Code but shall include the rights and duties of any party in a civil action brought in a superior court under Article 3 (commencing with Section 2016) of Chapter 3 of Title 4 of Part 4 of the Code of Civil Procedure. In all cases, discovery shall be completed prior to one week before the date set for hearing. The written notice delivered to the employee pursuant to Section 87672 shall be deemed an accusation. The written objection of the employee delivered pursuant to Section 87673 shall be deemed the notice of defense.

SEC. 134. Section 88131 of the Education Code is amended to read:

88131. The commission may authorize a hearing officer or other representative to conduct any hearing or investigation which the commission itself is authorized by this article to conduct. Any such authorized person conducting such hearing or investigation may

administer oaths, subpoena and require the attendance of witnesses and the production of books or papers, and cause the depositions of witnesses to be taken in the manner prescribed by law for like depositions in civil cases in the superior court of this state under Article 3 (commencing with Section 2016) of Chapter 3 of Title 4 of Part 4 of the Code of Civil Procedure. The commission may instruct such authorized representative to present findings or recommendations. The commission may accept, reject or amend any of the findings or recommendations of the said authorized representative. Any rejection or amendment of findings or recommendations shall be based either on a review of the transcript of the hearing or investigation or upon the results of such supplementary hearing or investigation as the commission may order.

The commission may employ by contract or as professional experts or otherwise any such hearing officers or other representatives and may adopt and amend such rules and procedures as may be necessary to effectuate this section.

SEC. 135. Section 325 of the Elections Code is amended to read:

325. "Judicial district" includes a municipal court district.

SEC. 136. Section 327 of the Elections Code is amended to read:

327. "Judicial officer" means any Justice of the Supreme Court, justice of a court of appeal, judge of the superior court, or judge of a municipal court.

SEC. 137. Section 8203 of the Elections Code is amended to read:

8203. In any county or any judicial district in which only the incumbent has filed nomination papers for the office of superior court judge or municipal court judge, his or her name shall not appear on the ballot unless there is filed with the elections official, within 10 days after the final date for filing nomination papers for the office, a petition indicating that a write-in campaign will be conducted for the office and signed by 100 registered voters qualified to vote with respect to the office.

If a petition indicating that a write-in campaign will be conducted for the office at the general election, signed by 100 registered voters qualified to vote with respect to the office, is filed with the elections official not less than 83 days before the general election, the name of the incumbent shall be placed on the general election ballot if it has not appeared on the direct primary election ballot.

If, in conformity with this section, the name of the incumbent does not appear either on the primary ballot or general election ballot, the elections official, on the day of the general election, shall declare the incumbent reelected. Certificates of election specified in Section 15401 or 15504 shall not be issued to a person reelected pursuant to this section before the day of the general election.

SEC. 138. Section 13107 of the Elections Code is amended to read:

13107. (a) With the exception of candidates for Justice of the State Supreme Court or court of appeal, immediately under the

name of each candidate, and not separated from the name by any line, may appear at the option of the candidate only one of the following designations:

(1) Words designating the elective city, county, district, state, or federal office which the candidate holds at the time of filing the nomination documents to which he or she was elected by vote of the people, or to which he or she was appointed, in the case of a superior or municipal court judge.

(2) The word "incumbent" if the candidate is a candidate for the same office which he or she holds at the time of filing the nomination papers, and was elected to that office by a vote of the people, or, in the case of a superior or municipal court judge, was appointed to that office.

(3) No more than three words designating either the current principal professions, vocations, or occupations of the candidate, or the principal professions, vocations, or occupations of the candidate during the calendar year immediately preceding the filing of nomination documents. For purposes of this section, all California geographical names shall be considered to be one word.

(4) The phrase "appointed incumbent" if the candidate holds an office other than a judicial office by virtue of appointment, and the candidate is a candidate for election to the same office, or, if the candidate is a candidate for election to the same office or to some other office, the word "appointed" and the title of the office. In either instance, the candidate may not use the unmodified word "incumbent" or any words designating the office unmodified by the word "appointed." However, the phrase "appointed incumbent" shall not be required of a candidate who seeks reelection to an office which he or she holds and to which he or she was appointed, as a nominated candidate, in lieu of an election, pursuant to Sections 5326 and 5328 of the Education Code or Section 7228, 7423, 7673, 10229, or 10515 of this code.

(b) Neither the Secretary of State nor any other election official shall accept a designation of which any of the following would be true:

(1) It would mislead the voter.

(2) It would suggest an evaluation of a candidate, such as outstanding, leading, expert, virtuous, or eminent.

(3) It abbreviates the word "retired" or places it following any word or words which it modifies.

(4) It uses a word or prefix, such as "former" or "ex-," which means a prior status. The only exception is the use of the word "retired."

(5) It uses the name of any political party, whether or not it has qualified for the ballot.

(6) It uses a word or words referring to a racial, religious, or ethnic group.

(7) It refers to any activity prohibited by law.

(c) If, upon checking the nomination documents, the election official finds the designation to be in violation of any of the

restrictions set forth in this section, the election official shall notify the candidate by registered or certified mail return receipt requested, addressed to the mailing address appearing on the candidate's nomination documents.

(1) The candidate shall, within three days from the date of receipt of the notice, appear before the election officer or, in the case of the Secretary of State, notify the Secretary of State by telephone, and provide an alternate designation.

(2) In the event the candidate fails to provide an alternate designation, no designation shall appear after the candidate's name.

(d) No designation given by a candidate shall be changed by the candidate after the final date for filing nomination documents, except as specifically requested by the elections official as specified in subdivision (c) or as provided in subdivision (e).

(e) The designation shall remain the same for all purposes of both primary and general elections, unless the candidate, at least 98 days prior to the general election, requests in writing a different designation which the candidate is entitled to use at the time of the request.

(f) In all cases, words so used shall be printed in 8-point roman uppercase and lowercase type except that, if the designation selected is so long that it would conflict with the space requirements of Sections 13207 and 13211, the elections official shall use a type size for the designation for each candidate for that office sufficiently smaller to meet these requirements.

(g) Whenever a foreign language translation of a candidate's designation is required under the Voting Rights Act of 1965 (42 U.S.C.A. Sec. 1971), as amended, to appear on the ballot in addition to the English language version, it shall be as short as possible, as consistent as is practicable with this section, and shall employ abbreviations and initials wherever possible in order to avoid undue length.

SEC. 139. Section 13109 of the Elections Code is amended to read:

13109. The order of precedence of offices on the ballot shall be as listed below for those offices and measures that apply to the election for which this ballot is provided. Beginning in the column to the left:

(a) Under the heading, PRESIDENT AND VICE PRESIDENT:

Nominees of the qualified political parties and independent nominees for President and Vice President.

(b) Under the heading, PRESIDENT OF THE UNITED STATES:

(1) Names of the presidential candidates to whom the delegates are pledged.

(2) Names of the chairpersons of unpledged delegations.

(c) Under the heading, STATE:

(1) Governor.

(2) Lieutenant Governor.

(3) Secretary of State.

(4) Controller.

(5) Treasurer.
(6) Attorney General.
(7) Insurance Commissioner.
(8) Member, State Board of Equalization.
(d) Under the heading, UNITED STATES SENATOR:
Candidates or nominees to the United States Senate.
(e) Under the heading, UNITED STATES REPRESENTATIVE:
Candidates or nominees to the House of Representatives of the United States.
(f) Under the heading, STATE SENATOR:
Candidates or nominees to the State Senate.
(g) Under the heading, MEMBER OF THE STATE ASSEMBLY:
Candidates or nominees to the Assembly.
(h) Under the heading, COUNTY COMMITTEE:
Members of the County Central Committee.
(i) Under the heading, JUDICIAL:
(1) Chief Justice of California.
(2) Associate Justice of the Supreme Court.
(3) Presiding Justice, Court of Appeal.
(4) Associate Justice, Court of Appeal.
(5) Judge of the Superior Court.
(6) Judge of the Municipal Court.
(7) Marshal.
(j) Under the heading, SCHOOL:
(1) Superintendent of Public Instruction.
(2) County Superintendent of Schools.
(3) County Board of Education Members.
(4) College District Governing Board Members.
(5) Unified District Governing Board Members.
(6) High School District Governing Board Members.
(7) Elementary District Governing Board Members.
(k) Under the heading, COUNTY:
(1) County Supervisor.
(2) Other offices in alphabetical order by the title of the office.
(*l*) Under the heading, CITY:
(1) Mayor.
(2) Member, City Council.
(3) Other offices in alphabetical order by the title of the office.
(m) Under the heading, DISTRICT:
Directors or trustees for each district in alphabetical order according to the name of the district.
(n) Under the heading, MEASURES SUBMITTED TO THE VOTERS and the appropriate heading from subdivisions (a) through (m), above, ballot measures in the order, state through district shown above, and within each jurisdiction, in the order prescribed by the official certifying them for the ballot.
(o) In order to allow for the most efficient use of space on the ballot in counties that use a voting system, as defined in Section 362,

the county elections official may vary the order of subdivisions (j), (k), (*l*), (m), and (n) as well as the order of offices within these subdivisions. However, the office of Superintendent of Public Instruction shall always precede any school, county, or city office, and state measures shall always precede local measures.

SEC. 140. Section 13111 of the Elections Code is amended to read:

13111. Candidates for each office shall be printed on the ballot in accordance with the following rules:

(a) The names of presidential candidates to whom candidates for delegate to the national convention are pledged, and the names of chairpersons of groups of candidates for delegate expressing no preference, shall be arranged on the primary election ballot by the Secretary of State by the names of the candidates in accordance with the randomized alphabet as provided for in Section 13112 in the case of the ballots for the First Assembly District. Thereafter, for each succeeding Assembly district, the name appearing first in the last preceding Assembly district shall be placed last, the order of the other names remaining unchanged.

(b) The names of the pairs of candidates for President and Vice President shall be arranged on the general election ballot by the Secretary of State by the names of the candidates for President in accordance with the randomized alphabet as provided for in Section 13112 in the case of the ballots for the First Assembly District. Thereafter, for each succeeding Assembly district, the pair appearing first in the last preceding Assembly district shall be placed last, the order of the other pairs remaining unchanged.

(c) In the case of all other offices, the candidates for which are to be voted on throughout the state, the Secretary of State shall arrange the names of the candidates for the office in accordance with the randomized alphabet as provided for in Section 13112 for the First Assembly District. Thereafter, for each succeeding Assembly district, the name appearing first in the last preceding Assembly district shall be placed last, the order of the other names remaining unchanged.

(d) If the office is that of Representative in Congress or member of the State Board of Equalization, the Secretary of State shall arrange the names of candidates for the office in accordance with the randomized alphabet as provided for in Section 13112 for that Assembly district that has the lowest number of all the Assembly districts in which candidates are to be voted on. Thereafter, for each succeeding Assembly district in which the candidates are to be voted on, the names appearing first in the last preceding Assembly district shall be placed last, the order of the other names remaining unchanged.

(e) If the office is that of State Senator or Member of the Assembly, the county elections official shall arrange the names of the candidates for the office in accordance with the randomized alphabet as provided for in Section 13112, unless the district encompasses more

than one county, in which case the arrangement shall be made pursuant to subdivision (i).

(f) If the office is to be voted upon wholly within, but not throughout, one county, as in the case of municipal, district, county supervisor, municipal court, and county central committee offices, the official responsible for conducting the election shall determine the order of names in accordance with the randomized alphabet as provided for in Section 13112.

(g) If the office is to be voted on throughout a single county, and there are not more than four Assembly districts wholly or partly in the county, the county elections official shall determine the order of names in accordance with the randomized alphabet as provided for in Section 13112 for the first supervisorial district. Thereafter, for each succeeding supervisorial district, the name appearing first for each office in the last preceding supervisorial district shall be placed last, the order of the other names remaining unchanged.

(h) If there are five or more Assembly districts wholly or partly in the county, an identical procedure shall be followed, except that rotation shall be by Assembly district, commencing with the Assembly district which has the lowest number.

(i) Except as provided in subdivision (d) of Section 13112, if the office is that of State Senator or Member of the Assembly, and the district includes more than one county, the county elections official in each county shall conduct a drawing of the letters of the alphabet, pursuant to the same procedures specified in Section 13112. The results of the drawing shall be known as a county randomized ballot and shall be used only to arrange the names of the candidates when the district includes more than one county.

(j) If the office is that of Justice of the California Supreme Court or a Court of Appeal, the appropriate elections officials shall arrange the names of the candidates for the office in accordance with the randomized alphabet as provided for in Section 13112. However, the names of the judicial candidates shall not be rotated among the applicable districts.

SEC. 141. Section 300 of the Evidence Code is amended to read:

300. Except as otherwise provided by statute, this code applies in every action before the Supreme Court or a court of appeal, superior court, or municipal court, including proceedings in such actions conducted by a referee, court commissioner, or similar officer, but does not apply in grand jury proceedings.

SEC. 142. Section 400 of the Family Code is amended to read:

400. Marriage may be solemnized by any of the following who is of the age of 18 years or older:

(a) A priest, minister, or rabbi of any religious denomination.

(b) A judge or retired judge, commissioner of civil marriages or retired commissioner of civil marriages, commissioner or retired commissioner, or assistant commissioner of a court of record in this state.

(c) A judge or magistrate who has resigned from office.

(d) Any of the following judges or magistrates of the United States:

(1) A justice or retired justice of the United States Supreme Court.

(2) A judge or retired judge of a court of appeals, a district court, or a court created by an act of Congress the judges of which are entitled to hold office during good behavior.

(3) A judge or retired judge of a bankruptcy court or a tax court.

(4) A United States magistrate or retired magistrate.

SEC. 143. Section 1785 of the Financial Code is amended to read:

1785. (a) If the commissioner finds that any of the factors set forth in Section 1781 is true with respect to any foreign (other nation) bank which is licensed to transact business in this state and that it is necessary for the protection of the interests of the creditors of such bank's business in this state or for the protection of the public interest that he or she take immediate possession of the property and business of the bank, the commissioner may by order forthwith take possession of the property and business of the bank and retain possession until the bank resumes business in this state or is finally liquidated. The bank may, with the consent of the commissioner, resume business in this state upon such conditions as the commissioner may prescribe.

(b) (1) Whenever the commissioner takes possession of the property and business of a foreign (other nation) bank pursuant to subdivision (a), such bank may, within 10 days, apply to the superior court in the county in which the primary office of the bank is located to enjoin further proceedings. The court may, after citing the commissioner to show cause why further proceedings should not be enjoined and after a hearing, dismiss such application or enjoin the commissioner from further proceedings and order him or her to surrender the property and business of the bank to the bank or make such further order as may be just.

(2) The judgment of the court may be appealed by the commissioner or by the bank in the manner provided by law for appeals from the judgment of a superior court to the court of appeal. In case the commissioner appeals the judgment of the court, such appeal shall operate as a stay of the judgment, and the commissioner shall not be required to post any bond.

(c) Whenever the commissioner takes possession of the property and business of a foreign (other nation) bank pursuant to subdivision (a), the commissioner shall conserve or liquidate the property and business of such bank pursuant to Articles 1 (commencing with Section 3100), 3 (commencing with Section 3160) and 6 (commencing with Section 3220) of Chapter 17, and the provisions of such articles (except Sections 3100, 3101, 3102, and 3126) shall apply as if the bank were a bank organized under the laws of this state.

(d) When the commissioner has completed the liquidation of the property and business of a foreign (other nation) bank, the commissioner shall transfer any remaining assets to such bank in

accordance with such orders as the court may issue. However, in case the bank has an office in another state of the United States which is in liquidation and the assets of such office appear to be insufficient to pay in full the creditors of the office, the court shall order the commissioner to transfer to the liquidator of the office such amount of any such remaining assets as appears to be necessary to cover such insufficiency; if there are two or more such offices and the amount of remaining assets is less than the aggregate amount of insufficiencies with respect to the offices, the court shall order the commissioner to distribute the remaining assets among the liquidators of such offices in such manner as the court finds equitable.

SEC. 143.5. Section 1785 of the Financial Code is amended to read:

1785. (a) If the commissioner finds that any of the factors set forth in Section 1781 is true with respect to any foreign (other nation) bank which is licensed to transact business in this state and that it is necessary for the protection of the interests of the accountholders or creditors of the bank's business in this state or for the protection of the public interest that he or she take immediate possession of the property and business of the bank, the commissioner may by order forthwith take possession of the property and business of the bank and retain possession until the bank resumes business in this state or is finally liquidated. The bank may, with the consent of the commissioner, resume business in this state upon conditions that the commissioner may prescribe.

(b) (1) Whenever the commissioner takes possession of the property and business of a foreign (other nation) bank pursuant to subdivision (a), the bank may, within 10 days, apply to the superior court in the county in which the primary office of the bank is located to enjoin further proceedings. The court may, after citing the commissioner to show cause why further proceedings should not be enjoined and after a hearing, dismiss the application or enjoin the commissioner from further proceedings and order him or her to surrender the property and business of the bank to the bank or make any further order that may be just.

(2) The judgment of the court may be appealed by the commissioner or by the bank in the manner provided by law for appeals from the judgment of a superior court to the court of appeal. If the commissioner appeals the judgment of the court, the appeal shall operate as a stay of the judgment, and the commissioner shall not be required to post any bond.

(c) Whenever the commissioner takes possession of the property and business of a foreign (other nation) bank pursuant to subdivision (a), the commissioner shall conserve or liquidate the property and business of the bank pursuant to Article 1 (commencing with Section 3100), Article 3 (commencing with Section 3160) and Article 6 (commencing with Section 3220) of Chapter 17, and the provisions

of those articles (except Sections 3100, 3101, 3102, and 3126) shall apply as if the bank were a California state bank.

(d) When the commissioner has completed the liquidation of the property and business of a foreign (other nation) bank, the commissioner shall transfer any remaining assets to the bank in accordance with orders that the court may issue. However, if the bank has an office in another state of the United States which is in liquidation and the assets of that office appear to be insufficient to pay in full the creditors of the office, the court shall order the commissioner to transfer to the liquidator of the office that amount of any remaining assets that appears to be necessary to cover the insufficiency; if there are two or more of offices of that type and the amount of remaining assets is less than the aggregate amount of insufficiencies with respect to those offices, the court shall order the commissioner to distribute the remaining assets among the liquidators of those offices in any manner as the court finds equitable.

SEC. 144. Section 1824 of the Financial Code is amended to read:

1824. An appeal may be taken from the judgment of the court by the commissioner or by the licensee in the manner provided by law for appeals from the judgment of a superior court to the court of appeal.

SEC. 145. Section 1893 of the Financial Code is amended to read:

1893. (a) If the commissioner finds that any of the factors set forth in Section 1889 is true with respect to any licensee and that it is necessary for the protection of the interests of purchasers or holders of traveler's checks issued by the licensee or for the protection of the public interest that the commissioner take immediate possession of the property and business of the licensee, the commissioner may by order forthwith take possession of the property and business of the licensee and retain possession until the licensee resumes business or is finally liquidated. The licensee may, with the consent of the commissioner, resume business upon such conditions as the commissioner may prescribe.

(b) Whenever the commissioner takes possession of the property and business of a licensee pursuant to subdivision (a), the licensee may, within 10 days, apply to the superior court in any county of this state in which an office of the licensee is located (or, in case the licensee has no office in this state, in the County of Sacramento, in the City and County of San Francisco, or in the County of Los Angeles) to enjoin further proceedings. The court may, after citing the commissioner to show cause why further proceedings should not be enjoined and after a hearing, dismiss the application or enjoin the commissioner from further proceedings and order the commissioner to surrender the property and business of the licensee to the licensee or make such further order as may be just. The judgment of the superior court may be appealed by the commissioner or by the licensee in the manner provided by law for appeals from the judgment of a superior court to the court of appeal.

(c) Whenever the commissioner takes possession of the property and business of a licensee pursuant to subdivision (a), the commissioner shall conserve or liquidate the property and business of the licensee pursuant to Article 1 (commencing with Section 3100) of Chapter 17, and the provisions of that article (except Sections 3100, 3101, and 3102) apply as if the licensee were a bank.

SEC. 146. Section 3102 of the Financial Code is amended to read:

3102. An appeal may be taken from the judgment of the court by the commissioner or by the bank in the manner provided by law for appeals from the judgment of a superior court to the court of appeal.

SEC. 147. Section 16154 of the Financial Code is amended to read:

16154. An appeal may be taken from the judgment of the court by the commissioner or by the corporation in the manner provided by law for appeals from the judgment of a superior court to the court of appeal. An appeal from the judgment of the court shall not operate as a stay of the judgment unless the court, on good cause, so orders. No bond need be given if an appeal is taken by the commissioner but if the appeal is taken by the corporation a bond shall be given as required by Sections 917.2 and 917.5 of the Code of Civil Procedure as condition to any stay.

SEC. 148. Section 17335 of the Financial Code is amended to read:

17335. An appeal may be taken from the judgment of the court by the commissioner or by Fidelity Corporation in the manner provided by law for appeals from the judgment of a superior court to the court of appeal. An appeal from the judgment of the court does not operate as a stay of the judgment unless the court, on good cause, so orders. No bond need be given if the appeal is taken by the commissioner, but if the appeal is taken by Fidelity Corporation a bond shall be given as required by Sections 917.2 and 917.5 of the Code of Civil Procedure as a condition to any stay.

SEC. 149. Section 18415.2 of the Financial Code is amended to read:

18415.2. An appeal may be taken from the judgment of the court by the commissioner or by the industrial loan company in the manner provided by law for appeals from the judgment of a superior court to the court of appeal.

SEC. 150. Section 18495 of the Financial Code is amended to read:

18495. An appeal may be taken from the judgment of the court by the commissioner or by Guaranty Corporation in the manner provided by law for appeals from the judgment of a superior court to the court of appeal. An appeal from the judgment of the court does not operate as a stay of the judgment unless the court, on good cause, so orders.

SEC. 151. Section 31713 of the Financial Code is amended to read:

31713. (a) If the commissioner finds that any of the factors set forth in Section 31709 is true with respect to any licensee and that it is necessary for the protection of the interests of the licensee or for the protection of the public interest that the commissioner take

immediate possession of the property and business of the licensee, the commissioner may forthwith take possession of the property and business of the licensee and retain possession until the licensee resumes business or is finally liquidated. The licensee may, with the consent of the commissioner, resume business upon such conditions as he or she may prescribe.

(b) Whenever the commissioner takes possession of the property and business of a licensee pursuant to subdivision (a), the licensee may apply within 10 days to the superior court in the county in which the head office of the licensee is located to enjoin further proceedings. The court, after citing the commissioner to show cause why further proceedings should not be enjoined and after a hearing, may dismiss the application or enjoin the commissioner from further proceedings and order the commissioner to surrender the property and business of the licensee to the licensee or make such further order as may be just.

(c) An appeal may be taken from the judgment of the superior court by the commissioner or by the licensee in the manner provided by law for appeals from the judgment of a superior court to the court of appeal. An appeal from the judgment of the superior court shall operate as a stay of the judgment. No bond need be given if the appeal is taken by the commissioner, but if the appeal is taken by the licensee, a bond shall be given as required by the Code of Civil Procedure.

(d) Whenever the commissioner takes possession of the property and business of a licensee pursuant to subdivision (a), the commissioner shall conserve or liquidate the property and business of the licensee pursuant to Article 1 (commencing with Section 3100), Chapter 17, Division 1, and the provisions of that article (except Sections 3100, 3101, and 3102) shall apply as if the licensee were a bank.

SEC. 152. Section 34113 of the Financial Code is amended to read:

34113. (a) If the commissioner finds that any of the factors set forth in Section 34109 is true with respect to any licensee and that it is necessary for the protection of the interests of purchasers or holders of payment instruments issued by the licensee or for the protection of the public interest that the commissioner take immediate possession of the property and business of the licensee, the commissioner may by order forthwith take possession of the property and business of the licensee and retain possession until the licensee resumes business or is finally liquidated. The licensee may, with the consent of the commissioner, resume business upon such conditions as the commissioner may prescribe.

(b) Whenever the commissioner takes possession of the property and business of a licensee pursuant to subdivision (a), the licensee may, within 10 days, apply to the superior court in any county of this state in which an office of the licensee is located (or, in case the licensee has no office in this state, in the County of Sacramento, in the

City and County of San Francisco, or in the County of Los Angeles) to enjoin further proceedings. The court may, after citing the commissioner to show cause why further proceedings should not be enjoined and after a hearing, dismiss the application or enjoin the commissioner from further proceedings and order the commissioner to surrender the property and business of the licensee to the licensee or make such further order as may be just. The judgment of the superior court may be appealed by the commissioner or by the licensee in the manner provided by law for appeals from the judgment of a superior court to the court of appeal.

(c) Whenever the commissioner takes possession of the property and business of a licensee pursuant to subdivision (a), the commissioner shall conserve or liquidate the property and business of the licensee pursuant to Article 1 (commencing with Section 3100), Chapter 17, Division 1, and the provisions of the article (except Sections 3100, 3101, and 3102) apply as if the licensee were a bank.

SEC. 153. Section 210 of the Fish and Game Code is amended to read:

210. (a) The commission shall provide copies of the regulations added, amended, or repealed pursuant to subdivision (e) of Section 206, subdivision (e) of Section 207, and subdivision (d) of Section 208 to each county clerk, each district attorney, and each judge of a municipal court or of the superior court in a county in which there is no municipal court, in the state.

(b) The commission and the department may do anything that is deemed necessary and proper to publicize and distribute regulations so that persons likely to be affected will be informed of them. The failure of the commission to provide any notice of its regulations, other than by filing them in accordance with Section 215, shall not impair the validity of the regulations.

(c) The department or the license agent may give a copy of the current applicable published regulations to each person issued a license at the time the license is issued.

(d) Notwithstanding any other provision of law, the commission and the department may contract with private entities to print regulations and other regulatory and public information. Printing contracts authorized by this subdivision and for which no state funds are expended are not subject to Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code, except for Article 2 (commencing with Section 10295) of Chapter 2.

SEC. 154. Section 309 of the Fish and Game Code is amended to read:

309. The commission or any person appointed by it to conduct a hearing may, in any investigation or hearing, cause the deposition of witnesses, residing within or without the state, to be taken in the manner prescribed by law for deposition in civil actions in the superior courts of this state under Article 3 (commencing with Section 2016) of Chapter 3 of Title 4 of Part 4 of the Code of Civil

Procedure, and may compel the attendance of witnesses and the production of documents and papers. The commission shall adopt regulations which afford procedural and substantive due process to any person whose license or permit is subject to revocation or suspension. Except upon conviction of a violation of this code or a regulation adopted pursuant to this code relating to the licensed or permitted activity and notwithstanding any other provision of this code, the commission shall not revoke or suspend any license or permit until the regulations required by this section have been adopted and approved by the Office of Administrative Law pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 155. Section 2357 of the Fish and Game Code is amended to read:

2357. It is unlawful to carry trout into an area where the season is closed unless an affidavit is made in duplicate before a notary public in the area in which the trout are or might be lawfully taken. Such affidavit shall state the date and place of taking such trout, and the name, address, and number of the angling license of the person legally taking such trout. The duplicate of the affidavit shall be left on file with the notary public before whom the affidavit is made.

SEC. 156. Section 4341 of the Fish and Game Code is amended to read:

4341. Any person legally killing a deer in this state shall have the license tag countersigned by a person employed in the department, a person designated for this purpose by the commission, or by a notary public, postmaster, peace officer, or an officer authorized to administer oaths, before transporting such deer, except for the purpose of taking it to the nearest person authorized to countersign the license tag, on the route being followed from the point where the deer is taken.

SEC. 157. Section 4755 of the Fish and Game Code is amended to read:

4755. Any person legally killing a bear in this state shall have the license tag countersigned by a fish and game commissioner, a person employed in the department, a person designated for this purpose by the commission, or by a notary public, postmaster, peace officer or by an officer authorized to administer oaths, before transporting such bear except for the purpose of taking it to the nearest officer authorized to countersign the license tag, on the route being followed from the point where the bear is taken.

SEC. 158. Section 5934 of the Fish and Game Code is amended to read:

5934. The commission or any party may, in any hearing, cause the deposition of witnesses to be taken in the manner prescribed by law for depositions in civil actions in the superior courts of this state under Article 3 (commencing with Section 2016) of Chapter 3 of Title 4 of Part 4 of the Code of Civil Procedure.

SEC. 159. Section 12150 of the Fish and Game Code is amended to read:

12150. Whenever any person, while taking a bird or mammal, kills or wounds any human being and that fact is ascertained by the department, the department shall notify the district attorney of the county in which the act occurred. The district attorney may thereupon bring an action in the municipal court of the judicial district in which the act occurred or in the superior court in a county in which there is no municipal court for the purpose of determining the cause of the killing or the wounding. Such proceedings shall be conducted in the same manner as an action to try a misdemeanor and the defendant may request that all findings of fact shall be made by a jury. The court shall inform the defendant of the nature of the proceedings and of the defendant's right to have a jury.

If it is found that such person did the killing or wounding but that it was not intentional or negligent, the court shall dismiss the proceeding. Otherwise, if it is found that such person did the killing or wounding intentionally, by an act of gross negligence, or while under the influence of alcohol, the court shall issue an order permanently prohibiting the defendant from taking any bird or mammal.

If it is found that such person was negligent, but not grossly negligent, the court shall issue an order prohibiting the defendant from taking any bird or mammal for a period specified at the discretion of the court but not less than five years.

SEC. 160. Section 12151 of the Fish and Game Code is amended to read:

12151. Whenever any person, while taking a bird or mammal, kills or wounds any domestic animal belonging to another and that fact is ascertained by the department, the department shall notify the district attorney of the county in which the act occurred. The district attorney may thereupon bring an action in the municipal court of the judicial district in which the act occurred or in the superior court in a county in which there is no municipal court for the purpose of determining the cause of the killing or wounding. Such proceedings shall be conducted in the same manner as an action to try a misdemeanor and the defendant may request that all findings of fact shall be made by a jury. The court shall inform the defendant of the nature of the proceedings and of the defendant's right to have a jury.

If it is found that such person did the killing or wounding but that it was not intentional or negligent, the court shall dismiss the proceeding. Otherwise, if it is found that such person did the killing or wounding intentionally or negligently, the court shall issue an order prohibiting the defendant from taking any bird or mammal for a period of five years.

SEC. 161. Section 7581 of the Food and Agricultural Code is amended to read:

7581. A proceeding pursuant to this article where the value of the property seized amounts to twenty-five thousand dollars ($25,000) or less is a limited civil case.

SEC. 162. Section 12647 of the Food and Agricultural Code is amended to read:

12647. A proceeding pursuant to this article where the value of the property seized amounts to twenty-five thousand dollars ($25,000) or less is a limited civil case.

SEC. 163. Section 25564 of the Food and Agricultural Code is amended to read:

25564. If the lot of poultry meat which is held is perishable or subject to rapid deterioration, the enforcing officer may file a verified petition in any superior or municipal court of the state to destroy such lot or otherwise abate the nuisance. The petition shall show the condition of the lot, that the lot is situated within the county, that the lot is held, and that notice of noncompliance has been served pursuant to this chapter. The court may thereupon order that such lot be forthwith destroyed or the nuisance otherwise abated as set forth in such order.

SEC. 164. Section 27601 of the Food and Agricultural Code is amended to read:

27601. Upon the request of the director or an authorized representative, the district attorney of the county in which the eggs and their containers which are a public nuisance are found, shall maintain, in the name of the people of the State of California, a civil action to abate and prevent the public nuisance.

Upon judgment and by order of the court, the eggs and their containers which are a public nuisance shall be condemned and destroyed in the manner which is directed by the court, or reconditioned, remarked, denatured, or otherwise processed, or released upon the conditions as the court in its discretion may impose to ensure that the nuisance is abated.

If the owner fails to comply with the order of the court within the time specified in the order, the court may order disposal of the eggs and their containers or their sale, under the terms and conditions as the court may prescribe, by the enforcement officer, or by the sheriff or marshal.

If the court orders the sale of any of the eggs and their containers which can be salvaged, the costs of disposal shall be deducted from the proceeds of sale and the balance paid into court for the owner.

A proceeding pursuant to this chapter or any regulation adopted pursuant to this chapter where the value of the property seized amounts to twenty-five thousand dollars ($25,000) or less is a limited civil case.

A public nuisance described in this section may only be abated in any action or proceeding pursuant to the remedies provided by this chapter. This chapter provides the exclusive source of costs and civil penalties which may be assessed by reason of the public nuisance

against the owner of eggs and their containers which are found to be a public nuisance.

SEC. 165. Section 29733 of the Food and Agricultural Code is amended to read:

29733. If a packer or owner of honey, or the agent of either, after notification to the packer, owner, or agent that the honey and its containers are a public nuisance, refuses, or fails within a reasonable time, to recondition or remark the honey so as to comply with all requirements of this chapter, the honey and its containers:

(a) May be seized by the director or any enforcement officer.

(b) By order of the municipal or superior court of the county or city within which the honey and its containers may be, shall be condemned and destroyed, or released upon such conditions as the court, in its discretion, may impose to insure that it will not be packed, delivered for shipment, shipped, transported, or sold in violation of this chapter.

SEC. 166. Section 30801 of the Food and Agricultural Code is amended to read:

30801. (a) A board of supervisors may provide for the issuance of serially numbered metallic dog licenses pursuant to this section. The dog licenses shall be:

(1) Stamped with the name of the county and the year of issue.

(2) Unless the board of supervisors designates the animal control department to issue the licenses, issued by the county clerk directly or through judges of municipal courts or the superior court in a county in which there is no municipal court, to owners of dogs, that make application.

(b) The licenses shall be issued for a period of not to exceed two years.

(c) In addition to the authority provided in subdivisions (a) and (b), a license may be issued, as provided by this section, by a board of supervisors for a period not to exceed three years for dogs that have attained the age of 12 months, or older, and who have been vaccinated against rabies. The person to whom the license is to be issued pursuant to this subdivision may choose a license period as established by the board of supervisors of up to one, two, or three years. However, when issuing a license pursuant to this subdivision, the license period shall not extend beyond the remaining period of validity for the current rabies vaccination.

SEC. 167. Section 31503 of the Food and Agricultural Code is amended to read:

31503. If any person sustains any loss or damage to any livestock or poultry which is caused by a dog, or if any livestock of any person is necessarily destroyed because of having been bitten by a dog, the person may file a complaint with any judge of the municipal court of the county within which the damage occurred or of the superior court in a county in which there is no municipal court. A proceeding under this section is a limited civil case.

SEC. 168. Section 31621 of the Food and Agricultural Code is amended to read:

31621. If an animal control officer or a law enforcement officer has investigated and determined that there exists probable cause to believe that a dog is potentially dangerous or vicious, the chief officer of the public pound or animal control department or his or her immediate supervisor or the head of the local law enforcement agency, or his or her designee, shall petition the municipal court within the judicial district wherein the dog is owned or kept or the superior court in a county in which there is no municipal court for a hearing for the purpose of determining whether or not the dog in question should be declared potentially dangerous or vicious. A proceeding under this section is a limited civil case. A city or county may establish an administrative hearing procedure to hear and dispose of petitions filed pursuant to this chapter. Whenever possible, any complaint received from a member of the public which serves as the evidentiary basis for the animal control officer or law enforcement officer to find probable cause shall be sworn to and verified by the complainant and shall be attached to the petition. The chief officer of the public pound or animal control department or head of the local law enforcement agency shall notify the owner or keeper of the dog that a hearing will be held by the municipal court, the superior court, or the hearing entity, as the case may be, at which time he or she may present evidence as to why the dog should not be declared potentially dangerous or vicious. The owner or keeper of the dog shall be served with notice of the hearing and a copy of the petition, either personally or by first-class mail with return receipt requested. The hearing shall be held promptly within no less than five working days nor more than 10 working days after service of notice upon the owner or keeper of the dog. The hearing shall be open to the public. The court may admit into evidence all relevant evidence, including incident reports and the affidavits of witnesses, limit the scope of discovery, and may shorten the time to produce records or witnesses. A jury shall not be available. The court may find, upon a preponderance of the evidence, that the dog is potentially dangerous or vicious and make other orders authorized by this chapter.

SEC. 169. Section 31622 of the Food and Agricultural Code is amended to read:

31622. (a) After the hearing conducted pursuant to Section 31621, the owner or keeper of the dog shall be notified in writing of the determination and orders issued, either personally or by first-class mail postage prepaid by the court or hearing entity. If a determination is made that the dog is potentially dangerous or vicious, the owner or keeper shall comply with Article 3 (commencing with Section 31641) in accordance with a time schedule established by the chief officer of the public pound or animal control department or the head of the local law enforcement

agency, but in no case more than 30 days after the date of the determination or 35 days if notice of the determination is mailed to the owner or keeper of the dog. If the petitioner or the owner or keeper of the dog contests the determination, he or she may, within five days of the receipt of the notice of determination, appeal the decision of the court or hearing entity of original jurisdiction to a court authorized to hear the appeal. The fee for filing an appeal shall be twenty dollars ($20), payable to the county clerk. If the original hearing held pursuant to Section 31621 was before a hearing entity other than a court of the jurisdiction, appeal shall be to the municipal court or superior court in a county in which there is no municipal court. If the original hearing was held in the municipal court, appeal shall be to the superior court. If the original hearing was held in the superior court, appeal shall be to the superior court before a judge other than the judge who originally heard the petition. The petitioner or the owner or keeper of the dog shall serve personally or by first-class mail, postage prepaid, notice of the appeal upon the other party.

(b) The court hearing the appeal shall conduct a hearing de novo, without a jury, and make its own determination as to potential danger and viciousness and make other orders authorized by this chapter, based upon the evidence presented. The hearing shall be conducted in the same manner and within the time periods set forth in Section 31621 and subdivision (a). The court may admit all relevant evidence, including incident reports and the affidavits of witnesses, limit the scope of discovery, and may shorten the time to produce records or witnesses. The issue shall be decided upon the preponderance of the evidence. If the court rules the dog to be potentially dangerous or vicious, the court may establish a time schedule to ensure compliance with this chapter, but in no case more than 30 days subsequent to the date of the court's determination or 35 days if the service of the judgment is by first-class mail.

SEC. 170. Section 43039 of the Food and Agricultural Code is amended to read:

43039. If the lot which is held is perishable or subject to rapid deterioration, the enforcing officer may file a verified petition in any superior or municipal court of the state to destroy the lot or otherwise abate the nuisance. The petition shall show the condition of the lot, that the lot is situated within the county, that the lot is held, and that notice of noncompliance has been served as provided in this article. The court may thereupon order that the lot be forthwith destroyed or the nuisance otherwise abated as set forth in the order.

SEC. 171. Section 52514 of the Food and Agricultural Code is amended to read:

52514. A proceeding pursuant to this article where the value of the property seized amounts to twenty-five thousand dollars ($25,000) or less is a limited civil case.

SEC. 172. Section 53564 of the Food and Agricultural Code is amended to read:

53564. A proceeding pursuant to this article where the value of the property is twenty-five thousand dollars ($25,000) or less is a limited civil case.

SEC. 173. Section 59289 of the Food and Agricultural Code is amended to read:

59289. The enforcing officer may file a verified petition in any superior or municipal court of this state requesting permission to divert such lot to any other available lawful use or to destroy the lot. The verified petition shall show all of the following:

(a) The condition of the lot.

(b) That the lot is situated within the territorial jurisdiction of the court in which the petition is being filed.

(c) That the lot is held, and that the notice of noncompliance has been served as provided in Section 59285.

(d) That the lot has not been reconditioned as required.

(e) The name and address of the owner and the person in possession of the lot.

(f) That the owner has refused permission to divert or to destroy the lot.

SEC. 174. Section 910 of the Government Code is amended to read:

910. A claim shall be presented by the claimant or by a person acting on his or her behalf and shall show all of the following:

(a) The name and post office address of the claimant.

(b) The post office address to which the person presenting the claim desires notices to be sent.

(c) The date, place and other circumstances of the occurrence or transaction which gave rise to the claim asserted.

(d) A general description of the indebtedness, obligation, injury, damage or loss incurred so far as it may be known at the time of presentation of the claim.

(e) The name or names of the public employee or employees causing the injury, damage, or loss, if known.

(f) The amount claimed if it totals less than ten thousand dollars ($10,000) as of the date of presentation of the claim, including the estimated amount of any prospective injury, damage, or loss, insofar as it may be known at the time of the presentation of the claim, together with the basis of computation of the amount claimed. If the amount claimed exceeds ten thousand dollars ($10,000), no dollar amount shall be included in the claim. However, it shall indicate whether the claim would be a limited civil case.

SEC. 175. Section 945.3 of the Government Code is amended to read:

945.3. No person charged by indictment, information, complaint, or other accusatory pleading charging a criminal offense may bring a civil action for money or damages against a peace officer or the

public entity employing a peace officer based upon conduct of the peace officer relating to the offense for which the accused is charged, including an act or omission in investigating or reporting the offense or arresting or detaining the accused, while the charges against the accused are pending before a municipal or superior court.

Any applicable statute of limitations for filing and prosecuting these actions shall be tolled during the period that the charges are pending before a municipal or superior court.

For the purposes of this section, charges pending before a municipal or superior court do not include appeals or criminal proceedings diverted pursuant to Chapter 2.5 (commencing with Section 1000), Chapter 2.6 (commencing with Section 1000.6), Chapter 2.7 (commencing with Section 1001), Chapter 2.8 (commencing with Section 1001.20), or Chapter 2.9 (commencing with Section 1001.50) of Title 6 of Part 2 of the Penal Code.

Nothing in this section shall prohibit the filing of a claim with the board of a public entity, and this section shall not extend the time within which a claim is required to be presented pursuant to Section 911.2.

SEC. 176. Section 990.2 of the Government Code is amended to read:

990.2. A county may insure any officer or attaché of its superior and municipal courts against all or any part of the officer or attaché's liability for injury resulting from any act or omission in the scope of the officer or attaché's employment, and also may insure against the expense of defending any claim against such officer or attaché, whether or not liability exists on such claim.

SEC. 177. Section 1770 of the Government Code is amended to read:

1770. An office becomes vacant on the happening of any of the following events before the expiration of the term:

(a) The death of the incumbent.

(b) An adjudication pursuant to a quo warranto proceeding declaring that the incumbent is physically or mentally incapacitated due to disease, illness, or accident and that there is reasonable cause to believe that the incumbent will not be able to perform the duties of his or her office for the remainder of his or her term. This subdivision shall not apply to offices created by the California Constitution nor to federal or state legislators.

(c) His or her resignation.

(d) His or her removal from office.

(e) His or her ceasing to be an inhabitant of the state, or if the office be local and one for which local residence is required by law, of the district, county, or city for which the officer was chosen or appointed, or within which the duties of his or her office are required to be discharged. However, the office of judge of a municipal court shall not become vacant when, as a result of a change in the boundaries of a judicial district during an incumbent's term, the

incumbent ceases to be an inhabitant of the district for which he or she was elected or appointed to serve.

(f) His or her absence from the state without the permission required by law beyond the period allowed by law.

(g) His or her ceasing to discharge the duties of his or her office for the period of three consecutive months, except when prevented by sickness, or when absent from the state with the permission required by law.

(h) His or her conviction of a felony or of any offense involving a violation of his or her official duties. An officer shall be deemed to have been convicted under this subdivision when trial court judgment is entered. For the purposes of this subdivision, "trial court judgment" means a judgment by the trial court either sentencing the officer or otherwise upholding and implementing the plea, verdict, or finding.

(i) His or her refusal or neglect to file his or her required oath or bond within the time prescribed.

(j) The decision of a competent tribunal declaring void his or her election or appointment.

(k) The making of an order vacating his or her office or declaring the office vacant when the officer fails to furnish an additional or supplemental bond.

(*l*) His or her commitment to a hospital or sanitarium by a court of competent jurisdiction as a drug addict, dipsomaniac, inebriate, or stimulant addict; but in that event the office shall not be deemed vacant until the order of commitment has become final.

SEC. 178. Section 3075 is added to the Government Code, to read:

3075. In a proceeding under this article, appeal is to the court of appeal.

SEC. 179. Section 3501.6 of the Government Code is amended to read:

3501.6. (a) In any transfer of functions from county employees to superior or municipal court employees occurring on or after January 1, 1992, the court shall continue to recognize the employee organization which represented the employees performing those functions at the time of the transfer of duties. The court shall also be bound by the terms of any memorandum of understanding that is in effect as of the date of the transfer of functions for the duration thereof, or until replaced by a subsequent memorandum of understanding.

(b) Notwithstanding Article 8 (commencing with Section 69890) of Chapter 5 of Title 8, merit personnel systems including the county civil service system and a system of discipline for cause only, shall be within the scope of representation by employee organizations for court employees affected by a transfer of functions as described in subdivision (a) unless otherwise prohibited by the charter of the county.

SEC. 180. Section 6701 of the Government Code is amended to read:

6701. If January 1st, February 12th, March 31st, July 4th, September 9th, November 11th, or December 25th falls upon a Sunday, the Monday following is a holiday. If November 11th falls upon a Saturday, the preceding Friday is a holiday.

If any holiday designated in Section 6700 falls on a Saturday, the board of supervisors of any county may by ordinance or resolution provide that an alternate day shall be a holiday for the employees of the county, except those employees of the county working as court attachés or as clerks of the superior or municipal courts.

SEC. 181. Section 11189 of the Government Code is amended to read:

11189. In any matter pending before a department head, the department head may cause the deposition of persons residing within or without the state to be taken by causing a petition to be filed in the Superior Court in the County of Sacramento reciting the nature of the matter pending, the name and residence of the person whose testimony is desired, and asking that an order be made requiring the person to appear and testify before an officer named in the petition for that purpose. Upon the filing of the petition the court may make an order requiring the person to appear and testify in the manner prescribed by law for like depositions in civil actions in the superior courts of this state under Article 3 (commencing with Section 2016) of Chapter 3 of Title 4 of Part 4 of the Code of Civil Procedure. In the same manner the superior courts may compel the attendance of persons as witnesses, and the production of papers, books, accounts, and documents, under Chapter 2 (commencing with Section 1985) of Title 3 of Part 4 of the Code of Civil Procedure, and may punish for contempt.

SEC. 182. Section 11511 of the Government Code is amended to read:

11511. On verified petition of any party, an administrative law judge or, if an administrative law judge has not been appointed, an agency may order that the testimony of any material witness residing within or without the state be taken by deposition in the manner prescribed by law for depositions in civil actions under Article 3 (commencing with Section 2016) of Chapter 3 of Title 4 of Part 4 of the Code of Civil Procedure. The petition shall set forth the nature of the pending proceeding; the name and address of the witness whose testimony is desired; a showing of the materiality of the testimony; a showing that the witness will be unable or cannot be compelled to attend; and shall request an order requiring the witness to appear and testify before an officer named in the petition for that purpose. The petitioner shall serve notice of hearing and a copy of the petition on the other parties at least 10 days before the hearing. Where the witness resides outside the state and where the administrative law judge or agency has ordered the taking of the

testimony by deposition, the agency shall obtain an order of court to that effect by filing a petition therefor in the superior court in Sacramento County. The proceedings thereon shall be in accordance with the provisions of Section 11189.

SEC. 183. Section 12965 of the Government Code is amended to read:

12965. (a) In the case of failure to eliminate an unlawful practice under this part through conference, conciliation or persuasion, or in advance thereof if circumstances warrant, the director in his or her discretion may cause to be issued in the name of the department a written accusation. The accusation shall contain the name of the person, employer, labor organization or employment agency accused, which shall be known as the respondent, shall set forth the nature of the charges, shall be served upon the respondent together with a copy of the verified complaint, as amended, and shall require the respondent to answer the charges at a hearing.

For any complaint treated by the director as a group or class complaint for purposes of investigation, conciliation, and accusation pursuant to Section 12961, an accusation shall be issued, if at all, within two years after the filing of the complaint. For all other complaints, an accusation shall be issued, if at all, within one year after the filing of a complaint. If the director determines, pursuant to Section 12961, that a complaint investigated as a group or class complaint under Section 12961 is to be treated as a group or class complaint for purposes of conciliation and accusation as well, such determination shall be made and shall be communicated in writing within one year after the filing of the complaint to each person, employer, labor organization, employment agency, or public entity alleged in the complaint to have committed an unlawful practice.

(b) If an accusation is not issued within 150 days after the filing of a complaint, or if the department earlier determines that no accusation will issue, the department shall promptly notify, in writing, the person claiming to be aggrieved that the department shall issue, on his or her request, the right-to-sue notice. This notice shall indicate that the person claiming to be aggrieved may bring a civil action under this part against the person, employer, labor organization or employment agency named in the verified complaint within one year from the date of that notice. If the person claiming to be aggrieved does not request a right-to-sue notice, the department shall issue the notice upon completion of its investigation, and not later than one year after the filing of the complaint. A city, county, or district attorney in a location having an enforcement unit established on or before March 1, 1991, pursuant to a local ordinance enacted for the purpose of prosecuting AIDS/HIV discrimination claims, acting on behalf of any person claiming to be aggrieved due to HIV/AIDS discrimination, may also bring a civil action under this part against the person, employer, labor organization, or employment agency named in the notice. The

superior and municipal courts of the State of California shall have jurisdiction of those actions, and the aggrieved person may file in any of these courts. Such an action may be brought in any county in the state in which the unlawful practice is alleged to have been committed, in the county in which the records relevant to the practice are maintained and administered, or in the county in which the aggrieved person would have worked or would have had access to the public accommodation but for the alleged unlawful practice, but if the defendant is not found within any of these counties, an action may be brought within the county of the defendant's residence or principal office. A copy of any complaint filed pursuant to this part shall be served on the principal offices of the department and of the commission. The remedy for failure to send a copy of a complaint is an order to do so. Those actions may not be filed as class actions or may not be maintained as class actions by the person or persons claiming to be aggrieved where those persons have filed a civil class action in the federal courts alleging a comparable claim of employment discrimination against the same defendant or defendants. In actions brought under this section, the court, in its discretion, may award to the prevailing party reasonable attorneys' fees and costs except where such action is filed by a public agency or a public official, acting in an official capacity.

(c) (1) If an accusation or amended accusation includes a prayer either for damages for emotional injuries as a component of actual damages, or for administrative fines, or for both, the respondent may within 30 days after service of the accusation or amended accusation, elect to transfer the proceedings to a court in lieu of a hearing pursuant to subdivision (a) by serving a written notice to that effect on the department, the commission, and the person claiming to be aggrieved. The commission shall prescribe the form and manner of giving written notice.

(2) No later than 30 days after the completion of service of the notice of election pursuant to paragraph (1), the department shall dismiss the accusation and shall, either itself or, at its election, through the Attorney General, file in the appropriate court an action in its own name on behalf of the person claiming to be aggrieved as the real party in interest. In this action, the person claiming to be aggrieved shall be the real party in interest and shall have the right to participate as a party and be represented by his or her own counsel. Complaints filed pursuant to this section shall be filed in the appropriate superior or municipal court in any county in which unlawful practices are alleged to have been committed, in the county in which records relevant to the alleged unlawful practices are maintained and administered, or in the county in which the person claiming to be aggrieved would have worked or would have had access to public accommodation, but for the alleged unlawful practices. If the defendant is not found in any of these counties, the action may be brought within the county of the defendant's

residence or principal office. Those actions shall be assigned to the court's delay reduction program, or otherwise given priority for disposition by the court in which the action is filed.

(3) A court may grant as relief in any action filed pursuant to this subdivision any relief a court is empowered to grant in a civil action brought pursuant to subdivision (b), in addition to any other relief that, in the judgment of the court, will effectuate the purpose of this part.

(4) The department may amend an accusation to pray for either damages for emotional injury or for administrative fines, or both, provided that the amendment is made within 30 days of the issuance of the original accusation.

SEC. 183.5. Section 12965 of the Government Code is amended to read:

12965. (a) In the case of failure to eliminate an unlawful practice under this part through conference, conciliation or persuasion, or in advance thereof if circumstances warrant, the director in his or her discretion may cause to be issued in the name of the department a written accusation. The accusation shall contain the name of the person, employer, labor organization or employment agency accused, which shall be known as the respondent, shall set forth the nature of the charges, shall be served upon the respondent together with a copy of the verified complaint, as amended, and shall require the respondent to answer the charges at a hearing.

For any complaint treated by the director as a group or class complaint for purposes of investigation, conciliation, and accusation pursuant to Section 12961, an accusation shall be issued, if at all, within two years after the filing of the complaint. For all other complaints, an accusation shall be issued, if at all, within one year after the filing of a complaint. If the director determines, pursuant to Section 12961, that a complaint investigated as a group or class complaint under Section 12961 is to be treated as a group or class complaint for purposes of conciliation and accusation as well, such determination shall be made and shall be communicated in writing within one year after the filing of the complaint to each person, employer, labor organization, employment agency, or public entity alleged in the complaint to have committed an unlawful practice.

(b) If an accusation is not issued within 150 days after the filing of a complaint, or if the department earlier determines that no accusation will issue, the department shall promptly notify, in writing, the person claiming to be aggrieved that the department shall issue, on his or her request, the right-to-sue notice. This notice shall indicate that the person claiming to be aggrieved may bring a civil action under this part against the person, employer, labor organization or employment agency named in the verified complaint within one year from the date of that notice. If the person claiming to be aggrieved does not request a right-to-sue notice, the department shall issue the notice upon completion of its

investigation, and not later than one year after the filing of the complaint. A city, county, or district attorney in a location having an enforcement unit established on or before March 1, 1991, pursuant to a local ordinance enacted for the purpose of prosecuting AIDS/HIV discrimination claims, acting on behalf of any person claiming to be aggrieved due to AIDS/HIV discrimination, may also bring a civil action under this part against the person, employer, labor organization, or employment agency named in the notice. The superior and municipal courts of the State of California shall have jurisdiction of those actions, and the aggrieved person may file in any of these courts. Such an action may be brought in any county in the state in which the unlawful practice is alleged to have been committed, in the county in which the records relevant to the practice are maintained and administered, or in the county in which the aggrieved person would have worked or would have had access to the public accommodation but for the alleged unlawful practice, but if the defendant is not found within any of these counties, an action may be brought within the county of the defendant's residence or principal office. A copy of any complaint filed pursuant to this part shall be served on the principal offices of the department and of the commission. The remedy for failure to send a copy of a complaint is an order to do so. Those actions may not be filed as class actions or may not be maintained as class actions by the person or persons claiming to be aggrieved where those persons have filed a civil class action in the federal courts alleging a comparable claim of employment discrimination against the same defendant or defendants. In actions brought under this section, the court, in its discretion, may award to the prevailing party reasonable attorneys' fees and costs, including expert witness fees, except where such action is filed by a public agency or a public official, acting in an official capacity.

(c) (1) If an accusation or amended accusation includes a prayer either for damages for emotional injuries as a component of actual damages, or for administrative fines, or for both, the respondent may within 30 days after service of the accusation or amended accusation, elect to transfer the proceedings to a court in lieu of a hearing pursuant to subdivision (a) by serving a written notice to that effect on the department, the commission, and the person claiming to be aggrieved. The commission shall prescribe the form and manner of giving written notice.

(2) No later than 30 days after the completion of service of the notice of election pursuant to paragraph (1), the department shall dismiss the accusation and shall, either itself or, at its election, through the Attorney General, file in the appropriate court an action in its own name on behalf of the person claiming to be aggrieved as the real party in interest. In this action, the person claiming to be aggrieved shall be the real party in interest and shall have the right to participate as a party and be represented by his or her own counsel.

Complaints filed pursuant to this section shall be filed in the appropriate superior or municipal court in any county in which unlawful practices are alleged to have been committed, in the county in which records relevant to the alleged unlawful practices are maintained and administered, or in the county in which the person claiming to be aggrieved would have worked or would have had access to public accommodation, but for the alleged unlawful practices. If the defendant is not found in any of these counties, the action may be brought within the county of the defendant's residence or principal office. Those actions shall be assigned to the court's delay reduction program, or otherwise given priority for disposition by the court in which the action is filed.

(3) A court may grant as relief in any action filed pursuant to this subdivision any relief a court is empowered to grant in a civil action brought pursuant to subdivision (b), in addition to any other relief that, in the judgment of the court, will effectuate the purpose of this part. This relief may include the requirement that an employer conduct training for all employees, supervisors, and management on the requirements of this part, the rights and remedies of those who allege a violation of this part, and the employer's internal grievance procedures.

(4) The department may amend an accusation to pray for either damages for emotional injury or for administrative fines, or both, provided that the amendment is made within 30 days of the issuance of the original accusation.

SEC. 184. Section 12972 of the Government Code is amended to read:

12972. (a) The commission shall conduct all actions and procedures in accordance with either of the following:

(1) Chapter 5 (commencing with Section 11500) of Part 1, except as otherwise specified by this part.

(2) Regulations adopted by the commission.

(b) In addition to the discovery available to each party pursuant to subdivision (a), the department and the respondent may each cause a single deposition to be taken in the manner prescribed by law for depositions in civil actions in the superior courts of this state under Article 3 (commencing with Section 2016) of Chapter 3 of Title 4 of Part 4 of the Code of Civil Procedure.

SEC. 185. Section 12980 of the Government Code is amended to read:

12980. This article governs the procedure for the prevention and elimination of discrimination in housing made unlawful pursuant to Article 2 (commencing with Section 12955) of Chapter 6.

(a) Any person claiming to be aggrieved by an alleged violation of Section 12955, 12955.1, or 12955.7 may file with the department a verified complaint in writing that shall state the name and address of the person alleged to have committed the violation complained of,

and that shall set forth the particulars thereof and contain any other information required by the department.

The filing of a complaint and pursuit of conciliation or remedy under this part shall not prejudice the complainant's right to pursue effective judicial relief under other applicable laws, but if a civil action has been filed under Section 52 of the Civil Code, the department shall terminate proceedings upon notification of the entry of final judgment unless the judgment is a dismissal entered at the complainant's request.

(b) The Attorney General or the director may, in a like manner, make, sign, and file complaints citing practices that appear to violate the purpose of this part or any specific provisions of this part relating to housing discrimination.

No complaint may be filed after the expiration of one year from the date upon which the alleged violation occurred or terminated.

(c) The department may thereupon proceed upon the complaint in the same manner and with the same powers as provided in this part in the case of an unlawful practice, except that where the provisions of this article provide greater rights and remedies to an aggrieved person than the provisions of Article 1 (commencing with Section 12960), the provisions of this article shall prevail.

(d) Upon the filing of a complaint, the department shall serve notice upon the complainant of the time limits, rights of the parties, and choice of forums provided for under the law, and shall also provide a written explanation that informs the complainant that, if an accusation is issued, the complainant may only be able to recover damages for emotional distress or other intangible injuries through a civil action filed under Section 12989.

(e) The department shall commence proceedings with respect to a complaint within 30 days of filing of the complaint.

(f) An investigation of allegations contained in any complaint filed with the department shall be completed within 100 days after receipt of the complaint, unless it is impracticable to do so. If the investigation is not completed within 100 days, the complainant and respondent shall be notified, in writing, of the department's reasons for not doing so.

(g) Upon the conclusion of each investigation, the department shall prepare a final investigative report containing all of the following:

(1) The names of any witnesses and the dates of any contacts with those witnesses.

(2) A summary of the dates of any correspondence or other contacts with the aggrieved persons or the respondent.

(3) A summary of witness statements.

(4) Answers to interrogatories.

(5) A summary description of other pertinent records.

A final investigative report may be amended if additional evidence is later discovered.

(h) If an accusation is not issued within 100 days after the filing of a complaint, or if the department earlier determines that no accusation will issue, the department shall promptly notify the person claiming to be aggrieved. This notice shall, in any event, be issued no more than 30 days after the date of the determination or 30 days after the date of the expiration of the 100-day period, whichever date first occurs. The notice shall indicate that the person claiming to be aggrieved may bring a civil action under this part against the person named in the verified complaint within the time period specified in Section 12989.1 of the Government Code. The notice shall also indicate, unless the department has determined that no accusation will be issued, that the person claiming to be aggrieved has the option of continuing to seek redress for the alleged discrimination through the procedures of the department if he or she does not desire to file a civil action. The superior and municipal courts of the State of California shall have jurisdiction of these actions, and the aggrieved person may file in any of these courts. The action may be brought in any county in the state in which the violation is alleged to have been committed, or in the county in which the records relevant to the alleged violation are maintained and administered, but if the defendant is not found within that county, the action may be brought within the county of the defendant's residence or principal office. A copy of any complaint filed pursuant to this part shall be served on the principal offices of the department and of the commission. The remedy for failure to send a copy of a complaint is an order to do so. In a civil action brought under this section, the court, in its discretion, may award to the prevailing party reasonable attorneys' fees.

(i) All agreements reached in settlement of any housing discrimination complaint filed pursuant to this section shall be made public, unless otherwise agreed by the complainant and respondent, and the department determines that the disclosure is not required to further the purposes of the act.

(j) All agreements reached in settlement of any housing discrimination complaint filed pursuant to this section shall be agreements between the respondent and complainant, and shall be subject to approval by the department.

SEC. 186. Section 15422 of the Government Code is amended to read:

15422. Where a county public defender has refused, or is otherwise reasonably unable to represent a person because of conflict of interest or other reason, the State Public Defender is authorized to represent such person, pursuant to a contract with the county which provides for reimbursement of costs, where the person is not financially able to employ counsel and is charged with the commission of any contempt or offense triable in the superior or municipal courts at all stages of any proceedings relating to such charge, including restrictions on liberty resulting from such charge. Except in cases of representation under subdivision (d) of Section

15421, the State Public Defender may decline to represent such person by filing a letter with the appropriate court citing Section 15420 of this chapter.

SEC. 187. Section 18671 of the Government Code is amended to read:

18671. Such hearings and investigations may be conducted by the board, any member, or any authorized representative of the board. Any authorized person conducting such hearing or investigation may administer oaths, subpoena and require the attendance of witnesses and the production of books or papers, and cause the depositions of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil cases in the superior court of this state under Article 3 (commencing with Section 2016) of Chapter 3 of Title 4 of Part 4 of the Code of Civil Procedure.

SEC. 188. Section 23220 of the Government Code is amended to read:

23220. On and after the effective date of the boundary change, the superior court and the municipal courts in each affected county shall retain jurisdiction in all cases pending in a session of those courts.

SEC. 189. Section 23296 of the Government Code is amended to read:

23296. Those municipal court districts in the transferring county which are located within the boundaries of the territory which is transferred immediately prior to its transfer shall continue in existence for all purposes with the same name, judges, officers, attachés, and other employees.

SEC. 190. Section 23398 of the Government Code is amended to read:

23398. Those municipal court districts in the affected county or counties which are located within the boundaries of the proposed county immediately prior to its creation shall continue in existence for all purposes in the proposed county with the same name, judges, officers, attachés, and other employees.

SEC. 191. Section 23579 of the Government Code is amended to read:

23579. Those municipal court districts in the affected counties immediately prior to consolidation shall continue in existence for all purposes in the consolidated county with the same name, judges, officers, attachés, and other employees.

SEC. 192. Section 24055 of the Government Code is amended to read:

24055. Any clerk or sheriff who receives any fine or forfeiture and refuses or neglects to pay it over according to law and within 30 days after its receipt is guilty of a misdemeanor.

SEC. 193. Section 24057 of the Government Code is amended to read:

24057. Every county officer and the officer's deputies may administer and certify oaths.

SEC. 194. Section 25351.3 of the Government Code is amended to read:

25351.3. In addition to its other powers and duties, the board of supervisors may do any or all of the following:

(a) Acquire land for and construct, lease, sublease, build, furnish, refurnish, or repair buildings for municipal or superior courts and for convention and exhibition halls, trade and industrial centers, auditoriums, opera houses, music halls and centers, motion picture and television museums, and related facilities used for public assembly purposes for the use, benefit and enjoyment of the public, including offstreet parking places for motor vehicles, ways of ingress and egress, and any other facilities and improvements necessary or convenient for their use.

(b) Acquire land and construct buildings, structures and facilities thereon, in whole or in part, with county funds or it may, by contract or lease with any nonprofit association or corporation, provide for the acquisition of land or the construction of buildings, structures and facilities, or all or any part thereof, for public assembly purposes, upon the terms the board may determine.

(c) Lease, pursuant to Section 25371, any real property owned by the county and available for public assembly purposes to any person, firm, corporation, or nonprofit association or corporation for public assembly purposes, with the person, firm, corporation, or nonprofit association or corporation to lease the real property, as improved, back to the county for use for the purposes stated in the lease. Any lease authorized by the board under this subdivision, except leases for municipal or superior courts, which may be entered into without advertising for bids, shall be awarded to the lowest responsible bidder after public competitive bidding conducted in the manner determined by the board. Notice inviting bids shall be published pursuant to Section 6066 in a newspaper as the board may direct.

(d) Enter into a lease or sublease, without advertising for bids therefor, of buildings, structures, and facilities or any of them with any nonprofit association or corporation which agrees to use the buildings, structures, and facilities so leased to it for the public assembly purposes for which they were or are to be built; or contract, without advertising, for bids with any nonprofit association or corporation for the maintenance, operation, and management of the buildings, structures, and facilities, or any part thereof used for public assembly purposes, including the scheduling and promotion of events therein, for a specified term, not to exceed 40 years, upon terms and conditions as may be agreed upon. The leases, subleases, or contracts shall provide that, at least annually, there shall be paid to the county the net revenue, if any, from the operation and use of the facilities, remaining after the payment of expenses and costs, if any, for maintenance, operation or management, interest, and principal payments upon loans to the nonprofit corporation or association for purposes of maintenance, operation, or management,

and any other expenses, and after providing maintenance and operation reserves. The lease, sublease, or contract shall also provide that, upon its expiration, all of the assets of the nonprofit association or corporation after payment or discharge of its indebtedness and liabilities shall be transferred to the county.

(e) If the county has a population in excess of 4,000,000, without advertising for bids therefor, grant any real property owned by the county, or lease, for a term not to exceed 99 years, any real property owned by the county, to any city, district, or other public entity for any of the above public assembly purposes, without consideration, except the agreement of the grantee or lessee to use the real property for the public assembly purposes specified, and upon terms and conditions which may be agreed upon by the board and the grantee or lessee.

The amendment to this section enacted by Chapter 755 of the Statutes of 1963 shall not be construed to affect or modify the duty of any county or board of supervisors to provide adequate quarters for courts but is intended to provide an alternative method of financing the acquisition of property and buildings for use for courthouse purposes.

SEC. 195. Section 25560.4 of the Government Code is amended to read:

25560.4. The board of supervisors of any county may, by a four-fifths vote of the members, use or dedicate any portion of any land acquired by the county by means of special assessment proceedings for park purposes, for the erection and maintenance of one or more buildings to house any municipal or superior court, or one or more departments or divisions of any one or more of such courts if the portion of the land to be so used or dedicated has not been used by the public for park purposes for a period of more than 10 years.

SEC. 196. Section 26299.008 of the Government Code is amended to read:

26299.008. "Court facilities" means the municipal and superior courts of the county, as well as any other facilities used for adult or juvenile court matters, criminal prosecutions, handling inmates, or a combination thereof.

SEC. 197. Section 26524 of the Government Code is amended to read:

26524. Upon request of any judge of the superior or municipal court, the district attorney shall appear for and represent the court or judge if the court or judge in his or her official capacity is a party defendant in any action.

SEC. 198. Section 26665 of the Government Code is amended to read:

26665. All writs, notices, or other process issued by superior or municipal courts in civil actions or proceedings may be served by any

duly qualified and acting marshal or sheriff of any county in the state, subject to the Code of Civil Procedure.

SEC. 199. Section 26806 of the Government Code is amended to read:

26806. (a) In counties having a population of 900,000 or over, the county clerk may employ as many foreign language interpreters as may be necessary to interpret in criminal cases in the superior and municipal courts, and in the juvenile court within the county and to translate documents intended for filing in any civil or criminal action or proceeding or for recordation in the county recorder's office.

(b) The county clerk, as clerk of the superior court, shall, when interpreters are needed, assign the interpreters so employed to interpret in criminal and juvenile cases in the superior court. When their services are needed, the clerk shall also assign interpreters so employed to interpret in criminal cases in municipal courts.

(c) The county clerk may also assign the interpreters so employed to interpret in civil cases in superior and municipal courts when their services are not required in criminal or juvenile cases and when so assigned, they shall collect from the litigants the fee fixed by the court and shall deposit the same in the county treasury.

(d) The interpreters so employed shall, when assigned to do so by the county clerk, translate documents to be recorded or to be filed in any civil or criminal action or proceeding. The fee to be collected for translating each such document shall be three dollars ($3) per folio for the first folio or part thereof, and two cents ($0.02) for each word thereafter. For preparing a carbon copy of such translation made at the time of preparing the original, the fee shall be twelve cents ($0.12) per folio or any part thereof. All such fees shall be deposited in the county treasury.

SEC. 200. Section 26820 of the Government Code is amended to read:

26820. The county clerk shall charge and collect the fees fixed in this article and in Article 2 (commencing with Section 72053) of Chapter 8 of Title 8 for service performed by the clerk, when not otherwise provided by law.

SEC. 201. Section 26820.4 of the Government Code is amended to read:

26820.4. The total fee for filing of the first paper in a civil action or proceeding in the superior court, other than in a limited civil case or an adoption proceeding, shall be one hundred eighty-five dollars ($185).

This section applies to the initial complaint, petition, or application, and the papers transmitted from another court on the transfer of a civil action or proceeding, but does not include documents filed pursuant to Section 491.150, 704.750, or 708.160 of the Code of Civil Procedure.

SEC. 201.5. Section 26820.4 of the Government Code is amended to read:

26820.4. The total fee for filing of the first paper in a civil action or proceeding in the superior court on behalf of a plaintiff or plaintiffs filed jointly, other than in a limited civil case or an adoption proceeding, shall be one hundred eighty-five dollars ($185).

This section applies to the initial complaint, petition, or application, and the papers transmitted from another court on the transfer of a civil action or proceeding, but does not include documents filed pursuant to Section 491.150, 704.750, or 708.160 of the Code of Civil Procedure.

SEC. 202. Section 26824 of the Government Code is amended to read:

26824. The fee for filing a notice of appeal to the appellate division of the superior court in a limited civil case is fifty dollars ($50). The Judicial Council may make rules governing the time and method of payment and providing for excuse.

SEC. 203. Section 26826 of the Government Code is amended to read:

26826. (a) The total fee for filing the first paper in the action described in Section 26820.4 on behalf of any defendant, intervenor, respondent, or adverse party, whether separately or jointly, except for the purpose of making disclaimer shall be one hundred eighty-two dollars ($182).

(b) As used in this section, the term "paper" does not include any of the following:

(1) A stipulation for the appointment of a temporary judge or of a court investigator, or the report made by the court investigator.

(2) The declaration of a spouse filed in an order to show cause proceeding.

(3) A marital settlement agreement which is signed by a defaulted respondent and intended for incorporation in a proposed decree of dissolution of marriage.

(4) A stipulation regarding the date of termination of the marital status when the court has retained jurisdiction over that date.

(5) A document relating to a stipulated postjudgment modification of child support.

(6) A stipulation to modify a marital settlement agreement which was signed by a defaulted respondent and incorporated in a decree of dissolution if the stipulation is presented by the petitioner.

SEC. 203.5. Section 26826 of the Government Code is amended to read:

26826. (a) The total fee for filing the first paper in the action described in Section 26820.4 on behalf of any defendant, intervenor, respondent, or adverse party, or several of them filing jointly, except for the purpose of making disclaimer shall be one hundred eighty-two dollars ($182).

(b) As used in this section, the term "paper" does not include any of the following:

(1) A stipulation for the appointment of a temporary judge or of a court investigator, or the report made by the court investigator.

(2) The declaration of a spouse filed in an order to show cause proceeding.

(3) A marital settlement agreement which is signed by a defaulted respondent and intended for incorporation in a proposed decree of dissolution of marriage.

(4) A stipulation regarding the date of termination of the marital status when the court has retained jurisdiction over that date.

(5) A document relating to a stipulated postjudgment modification of child support.

(6) A stipulation to modify a marital settlement agreement which was signed by a defaulted respondent and incorporated in a decree of dissolution if the stipulation is presented by the petitioner.

(7) An application for an order authorizing compromise of a minor's claim.

(8) An answer or other responsive pleading intended solely to notify other parties to the action and the court that the matter has been stayed pending the determination of the filing party's petition in bankruptcy.

SEC. 204. Section 26826.01 of the Government Code is amended to read:

26826.01. (a) The fee for filing an amended complaint or amendment to a complaint in a civil action or proceeding in the superior court other than in a limited civil case is seventy-five dollars ($75).

(b) The fee for filing a cross-complaint, amended cross-complaint, or amendment to a cross-complaint in a civil action or proceeding in the superior court other than in a limited civil case is seventy-five dollars ($75).

(c) A party shall not be required to pay the fee provided by this section for an amended complaint, amendment to a complaint, amended cross-complaint, or amendment to a cross-complaint more than one time in any action.

(d) The fee provided by this section shall not apply to any of the following:

(1) An amended pleading or amendment to a pleading ordered by the court to be filed.

(2) An amended pleading or amendment to a pleading that only names previously fictitiously named defendants.

(e) This section shall become inoperative on July 1, 2000, and, as of January 1, 2001, is repealed, unless a later enacted statute, that becomes effective on or before January 1, 2001, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 205. Section 26863 of the Government Code is amended to read:

26863. (a) The board of supervisors of any county may provide for an additional fee of one dollar ($1) for filings in a civil action or

proceeding, as specified in Section 68090.7, to defray the cost of automating the county clerk and municipal court recordkeeping system and conversion of the county clerk and municipal court document storage system to micrographics.

(b) The board of supervisors may increase this additional fee to not more than three dollars ($3) if it expends an additional, matching amount from the county general fund, equal to the revenue derived from the increase, exclusively to pay the costs of automating the county clerk and municipal court recordkeeping system or converting the court's document system to micrographics, or both.

(c) Upon completion of the automation and conversion, and payment of the costs therefor, the additional fee shall no longer be imposed.

SEC. 206. Section 27082 of the Government Code is amended to read:

27082. Upon receiving from the coroner money found on a dead body, the treasurer shall place it to the credit of the county. The money shall be credited to a separate trust fund or trust account. If the legal representatives of the decedent demand the money in the treasury belonging to the decedent within six years, the treasurer shall pay it to them, after deducting the fees and expenses of the coroner and of the county in relation to the matter, or the money may be paid at any time thereafter upon the order of the board of supervisors.

SEC. 207. Section 27647 of the Government Code is amended to read:

27647. (a) If requested so to do by the superior court of the county of the county counsel, or by any municipal court in such county, or by any judge thereof, and insofar as such duties are not in conflict with, and do not interfere with, other duties, the county counsel may represent any such court or judge thereof in all matters and questions of law pertaining to any of such judge's duties, including any representation authorized by Section 68111 and representation in all civil actions and proceedings in any court in which with respect to the court's or judge's official capacity, such court or judge is concerned or is a party.

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

(1) Any criminal proceedings in which a judge is a defendant.

(2) Any grand jury proceedings.

(3) Any proceeding before the Commission on Judicial Qualifications.

(4) Any civil action or proceeding arising out of facts under which the judge was convicted of a criminal offense in a criminal proceeding.

SEC. 208. Section 27706 of the Government Code is amended to read:

27706. The public defender shall perform the following duties:

(a) Upon request of the defendant or upon order of the court, the public defender shall defend, without expense to the defendant, except as provided by Section 987.8 of the Penal Code, any person who is not financially able to employ counsel and who is charged with the commission of any contempt or offense triable in the superior or municipal courts at all stages of the proceedings, including the preliminary examination. The public defender shall, upon request, give counsel and advice to such person about any charge against the person upon which the public defender is conducting the defense, and shall prosecute all appeals to a higher court or courts of any person who has been convicted, where, in the opinion of the public defender, the appeal will or might reasonably be expected to result in the reversal or modification of the judgment of conviction.

(b) Upon request, the public defender shall prosecute actions for the collection of wages and other demands of any person who is not financially able to employ counsel, where the sum involved does not exceed one hundred dollars ($100), and where, in the judgment of the public defender, the claim urged is valid and enforceable in the courts.

(c) Upon request, the public defender shall defend any person who is not financially able to employ counsel in any civil litigation in which, in the judgment of the public defender, the person is being persecuted or unjustly harassed.

(d) Upon request, or upon order of the court, the public defender shall represent any person who is not financially able to employ counsel in proceedings under Division 4 (commencing with Section 1400) of the Probate Code and Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code.

(e) Upon order of the court, the public defender shall represent any person who is entitled to be represented by counsel but is not financially able to employ counsel in proceedings under Chapter 2 (commencing with Section 500) of Part 1 of Division 2 of the Welfare and Institutions Code.

(f) Upon order of the court the public defender shall represent any person who is required to have counsel pursuant to Section 686.1 of the Penal Code.

(g) Upon the order of the court or upon the request of the person involved, the public defender may represent any person who is not financially able to employ counsel in a proceeding of any nature relating to the nature or conditions of detention, of other restrictions prior to adjudication, of treatment, or of punishment resulting from criminal or juvenile proceedings.

SEC. 209. Section 28003 of the Government Code is amended to read:

28003. In any county the board of supervisors may by ordinance fix a date or schedule of dates for the payment of salaries of the officers, deputies, clerks, and employees of the several departments and institutions of the county government, including, but not limited

to, the judges and other officers and the employees and attachés of the superior and municipal courts in the county.

SEC. 210. Section 29603 of the Government Code is amended to read:

29603. The sums required by law to be paid to the grand and trial jurors and witnesses in criminal cases tried in a superior or municipal court are county charges.

SEC. 211. Section 29605 of the Government Code is repealed.

SEC. 212. Section 29610 of the Government Code is amended to read:

29610. The expenses of any elected county officer and one marshal of a municipal court chosen by the marshals of the municipal courts incurred while traveling to and from and while attending the annual convention of his or her respective association, are county charges which do not require prior approval of the board of supervisors. The board of supervisors may require prior approval by the board of supervisors for any other officer or employee to incur those expenses as county charges.

SEC. 213. Section 31469 of the Government Code is amended to read:

31469. (a) "Employee" means any officer or other person employed by a county whose compensation is fixed by the board of supervisors or by statute and whose compensation is paid by the county, and any officer or other person employed by any district within the county.

(b) "Employee" includes any officer or attaché of any superior court or municipal court which has been brought within the operation of this chapter.

(c) "Employee" includes any officer or other person employed by a district as defined in subdivision (c) of Section 31468 and whose compensation is paid from funds of the district.

(d) "Employee" includes any member paid from the county school service fund who elected pursuant to Education Code Section 873.1 to remain a member of this system.

(e) "Employee" includes any person permanently employed by a local agency formation commission including the executive officer thereof.

SEC. 214. Section 41606 of the Government Code is amended to read:

41606. For service of any process the chief of police shall receive the same fees as sheriffs. Fees of the chief of police for services in criminal actions or proceedings upon process issued from the city court are not a county charge.

SEC. 215. Section 50920 of the Government Code is amended to read:

50920. As used in this article, the term "peace officer" means a sheriff, undersheriff, deputy sheriff, marshal, or deputy marshal of a county, city and county, or judicial district, or a marshal or police

officer of a city or town, employed and compensated as such, whether the members are volunteer, partly paid, or fully paid, except those whose principal duties are clerical, such as stenographers, telephone operators, and other workers not engaged in law enforcement operations, or the protection or preservation of life or property, and not under suspension or otherwise lacking in good standing.

SEC. 216. Section 53069.4 of the Government Code is amended to read:

53069.4. (a) (1) The legislative body of a local agency, as the term "local agency" is defined in Section 54951, may by ordinance make any violation of any ordinance enacted by the local agency subject to an administrative fine or penalty. The local agency shall set forth by ordinance the administrative procedures that shall govern the imposition, enforcement, collection, and administrative review by the local agency of those administrative fines or penalties. Where the violation would otherwise be an infraction, the administrative fine or penalty shall not exceed the maximum fine or penalty amounts for infractions set forth in subdivision (b) of Section 25132 and subdivision (b) of Section 36900.

(2) The administrative procedures set forth by ordinance adopted by the local agency pursuant to paragraph (1) shall provide for a reasonable period of time, as specified in the ordinance, for a person responsible for a continuing violation to correct or otherwise remedy the violation prior to the imposition of administrative fines or penalties, when the violation pertains to building, plumbing, electrical, or other similar structural or zoning issues, that do not create an immediate danger to health or safety.

(b) (1) Notwithstanding the provisions of Section 1094.5 or 1094.6 of the Code of Civil Procedure, within 20 days after service of the final administrative order or decision of the local agency is made pursuant to an ordinance enacted in accordance with this section regarding the imposition, enforcement or collection of the administrative fines or penalties, a person contesting that final administrative order or decision may seek review by filing an appeal to be heard by the municipal court or by the superior court in a county in which there is no municipal court, where the same shall be heard de novo, except that the contents of the local agency's file in the case shall be received in evidence. A proceeding under this subdivision is a limited civil case. A copy of the document or instrument of the local agency providing notice of the violation and imposition of the administrative fine or penalty shall be admitted into evidence as prima facie evidence of the facts stated therein. A copy of the notice of appeal shall be served in person or by first-class mail upon the local agency by the contestant.

(2) The fee for filing the notice of appeal shall be twenty-five dollars ($25). The court shall request that the local agency's file on the case be forwarded to the court, to be received within 15 days of the request. The court shall retain the twenty-five dollar ($25) fee

regardless of the outcome of the appeal. If the court finds in favor of the contestant, the amount of the fee shall be reimbursed to the contestant by the local agency. Any deposit of the fine or penalty shall be refunded by the local agency in accordance with the judgment of the court.

(3) The conduct of the appeal under this section is a subordinate judicial duty that may be performed by traffic trial commissioners and other subordinate judicial officials at the direction of the presiding judge of the court.

(c) If no notice of appeal of the local agency's final administrative order or decision is filed within the period set forth in this section, the order or decision shall be deemed confirmed.

(d) If the fine or penalty has not been deposited and the decision of the court is against the contestant, the local agency may proceed to collect the penalty pursuant to the procedures set forth in its ordinance.

SEC. 217. Section 53075.6 of the Government Code is amended to read:

53075.6. Whenever a peace officer or public officer or employee, when authorized by ordinance and as defined in Section 836.5 of the Penal Code, arrests any person for operating as a taxicab without a valid taxicab certificate, license, or permit required by any ordinance, and the offense occurred at a public airport, within 100 feet of a public airport, or within two miles of the international border between the United States and Mexico, the officer or employee may impound and retain possession of any vehicle used in a violation of the ordinance.

If the vehicle is seized from a person who is not the owner of the vehicle, the impounding authority shall immediately give notice to the owner by first-class mail.

The vehicle shall immediately be returned to the owner without cost to the owner if the infraction or violation is not prosecuted or is dismissed, the owner is found not guilty of the offense, or it is determined that the vehicle was used in violation of the ordinance without the knowledge and consent of the owner. Otherwise, the vehicle shall be returned to the owner upon payment of any fine ordered by the court. After the expiration of six weeks from the final disposition of the criminal case, the impounding authority may deal with the vehicle as lost or abandoned property under Section 1411 of the Penal Code.

At any time, a person may make a motion in municipal court or superior court in a county in which there is no municipal court for the immediate return of a vehicle on the ground that there was no probable cause to seize it or that there is some other good cause, as determined by the court, for the return of the vehicle. A proceeding under this paragraph is a limited civil case.

No officer or employee, however, shall impound any vehicle owned or operated by a nonprofit organization exempt from taxation

pursuant to Section 501(c)(3) of the Internal Revenue Code which serves youth or senior citizens and provides transportation incidental to its programs or services.

SEC. 218. Section 53075.61 of the Government Code is amended to read:

53075.61. A transportation inspector, authorized by a local government to cite any person for operating as a taxicab without a valid taxicab certificate, license, or permit required by any ordinance, may impound and retain possession of any vehicle used in a violation of the ordinance.

If the vehicle is seized from a person who is not the owner of the vehicle, the impounding authority shall immediately give notice to the owner by first-class mail.

The vehicle shall immediately be returned to the owner without cost to the owner if the infraction or violation is not prosecuted or is dismissed, the owner is found not guilty of the offense, or it is determined that the vehicle was used in violation of the ordinance without the knowledge and consent of the owner. Otherwise, the vehicle shall be returned to the owner upon payment of any fine ordered by the court. After the expiration of six weeks from the final disposition of the criminal case, the impounding authority may deal with the vehicle as lost or abandoned property under Section 1411 of the Penal Code.

At any time, a person may make a motion in municipal court or superior court in a county in which there is no municipal court for the immediate return of a vehicle on the ground that there was no probable cause to seize it or that there is some other good cause, as determined by the court, for the return of the vehicle. A proceeding under this paragraph is a limited civil case.

No officer or employee, however, shall impound any vehicle owned or operated by a nonprofit organization exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code which serves youth or senior citizens and provides transportation incidental to its programs or services.

SEC. 219. Section 53679 of the Government Code is amended to read:

53679. So far as possible, all money belonging to a local agency under the control of any of its officers or employees other than the treasurer or a judge or officer of a municipal court shall, and all money coming into the possession of a judge or officer of a municipal court may, be deposited as active deposits in the state or national bank, inactive deposits in the state or national bank or state or federal association, federal or state credit union, or federally insured industrial loan company in this state selected by the officer, employee, or judge of the court. For purposes of this section, an officer or employee of a local agency and a judge or officer of a municipal court are prohibited from depositing local agency funds or money coming into their possession into a state or federal credit

union if an officer or employee of the local agency, or a judge or officer of a municipal court, 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 particular state or federal credit union. Such money is subject to this article except:

(a) Deposits in an amount less than that insured pursuant to federal law are not subject to this article.

For deposits in excess of the amount insured under any federal law a contract in accordance with Section 53649 is required and the provisions of this article shall apply.

(b) Interest is not required on money deposited in an active deposit by a judge or officer of a municipal court.

(c) Interest is not required on money deposited in an active deposit by an officer having control of a revolving fund created pursuant to Chapter 2 (commencing with Section 29300) of Division 3 of Title 3.

(d) Interest is not required on money deposited in an active deposit by an officer having control of a special fund established pursuant to Articles 5 (commencing with Section 29400) or 6 (commencing with Section 29430) of Chapter 2 of Division 3 of Title 3.

SEC. 220. Section 68071 of the Government Code is amended to read:

68071. No rule adopted by a superior or municipal court shall take effect until the January 1 or July 1, whichever comes first, following the 30th day after it has been filed with the Judicial Council and the clerk of the court, and made immediately available for public examination. The Judicial Council may establish, by rule, a procedure for exceptions to these effective dates.

SEC. 221. Section 68072 of the Government Code is amended to read:

68072. Rules adopted by the Judicial Council, the Supreme Court, or a court of appeal shall take effect on a date to be fixed in the order of adoption. If no effective date is fixed, those rules shall take effect 60 days after their adoption. Rules adopted by a superior or municipal court shall take effect as provided in Section 68071.

SEC. 222. Section 68074.1 of the Government Code is amended to read:

68074.1. The seal of any superior or municipal court may be affixed by a seal press or stamp which will print or emboss a seal which will reproduce legibly under photographic methods.

SEC. 223. Section 68078 of the Government Code is repealed.

SEC. 224. Section 68081 of the Government Code is amended to read:

68081. Before the Supreme Court, a court of appeal, or the appellate division of a superior court renders a decision in a proceeding other than a summary denial of a petition for an extraordinary writ, based upon an issue which was not proposed or

briefed by any party to the proceeding, the court shall afford the parties an opportunity to present their views on the matter through supplemental briefing. If the court fails to afford that opportunity, a rehearing shall be ordered upon timely petition of any party.

SEC. 225. Section 68084 of the Government Code is amended to read:

68084. When any money is deposited with the clerk or judge of any court pursuant to any action or proceeding in the court, or pursuant to any order, decree, or judgment of the court, or when any money is to be paid to the treasurer pursuant to any provision of this title or the Code of Civil Procedure, that money shall be deposited as soon as practicable after the receipt thereof with the treasurer and a duplicate receipt of the treasurer for it shall be filed with the auditor. The certificate of the auditor that a duplicate receipt has been filed is necessary before the clerk, judge, or party required to deposit the money is entitled to a discharge of the obligation imposed upon the clerk, judge, or party to make the deposit.

When any money so deposited is to be withdrawn or paid out, the order directing the payment or withdrawal shall require the auditor to draw a warrant for it and the treasurer to pay it. In any city governed by a charter, such withdrawals shall be made pursuant to the charter.

Notwithstanding any other provision of law, any municipal court, or marshal of that court, may elect, with prior approval of the county auditor, to deposit in a bank account or deposit in a savings and loan association pursuant to Section 53679 all moneys deposited with that court, or with the clerk thereof, or received by a marshal. All moneys received and disbursed through that account or on deposit shall be properly accounted for under those procedures the Controller may deem necessary, and shall be subject to periodic settlement with the county auditor as required by law.

SEC. 226. Section 68086 of the Government Code is amended to read:

68086. (a) In all superior court departments not selected to participate in the demonstration project established under Section 270 of the Code of Civil Procedure:

(1) In addition to any other trial court fee required in civil cases, a fee equal to the actual cost of providing that service shall be charged per one-half day of services to the parties, on a pro rata basis, for the services of an official reporter on the first and each succeeding judicial day those services are required.

(2) All parties shall deposit their pro rata shares of these fees with the clerk of the court at the beginning of the second and each succeeding day's court session.

(3) For purposes of this section, "one-half day" means any period of judicial time during either the morning or afternoon court session.

(4) The costs for the services of the official reporter shall be recoverable as taxable costs at the conclusion of trial.

(5) The Judicial Council shall adopt rules to ensure all of the following:

(A) That parties are given adequate and timely notice of the availability of an official reporter.

(B) That if an official reporter is not available, a party may arrange for the presence of a certified shorthand reporter to serve as an official pro tempore reporter, the costs therefore recoverable as provided in paragraph (4).

(C) That if the services of an official pro tempore reporter are utilized pursuant to this section, no other charge will be made to the parties.

(b) In all superior court departments selected to participate in the demonstration project established under Section 270 of the Code of Civil Procedure, and in all municipal courts:

(1) In addition to any other trial court fee required in civil cases, a fee equal to the actual cost of providing that service shall be charged per one-half day of services to the parties, on a pro rata basis, for official reporting services on the first and each succeeding judicial day those services are required.

(2) All parties shall deposit their pro rata shares of these fees with the clerk of the court at the beginning of the second and each succeeding day's court session.

(3) For purposes of this section, "one-half day" means any period of judicial time during either the morning or afternoon court session.

(4) The costs for the official reporting services shall be recoverable as taxable costs at the conclusion of trial.

(5) The Judicial Council shall adopt rules to ensure all of the following:

(A) That litigants receive adequate information about any change in the availability of official reporting services.

(B) That if official reporting services are not available, a party may arrange for the presence of a certified shorthand reporter to serve as an official pro tempore reporter, the costs therefore recoverable as provided in paragraph (4).

(C) That if the services of a pro tempore reporter are utilized because official reporting services are unavailable, no other charge will be made to the parties for recording the proceeding.

SEC. 227. Section 68090.7 of the Government Code is amended to read:

68090.7. The board of supervisors of any county, as specified in Sections 26863 and 72054, may provide for a fee for the following filings in each civil action or proceeding:

(a) The first paper and papers transmitted from another court, as specified in Sections 26820.4 and 72055.

(b) The first paper on behalf of an adverse party, as specified in Sections 26826 and 72056.

(c) A petition or other paper in a probate, guardianship, or conservatorship matter as specified by Section 26827.

The fee shall not apply to adoptions, appeals from a municipal court, or motions.

Except as otherwise specified by law, all fees collected under this section shall be transmitted to the county treasurer and an amount equal thereto shall be used exclusively to pay the costs of automating the court clerk and municipal court recordkeeping system or converting the court's document system to micrographics, or both.

SEC. 227.5. Section 68090.7 of the Government Code is amended to read:

68090.7. In any county that has established a fee pursuant to Sections 26863 and 72054, the fee shall only apply to the following filings in each civil action or proceeding:

(a) The first paper and papers transmitted from another court, as specified in Sections 26820.4 and 72055.

(b) The first paper on behalf of an adverse party, as specified in Sections 26826 and 72056.

(c) A petition or other paper in a probate, guardianship, or conservatorship matter as specified by Section 26827.

The fee shall not apply to adoptions, appeals from a municipal court, or motions.

Except as otherwise specified by law, all fees collected under this section shall be deposited into the trial court operations fund of the county established pursuant to Section 77009, and an amount equal thereto shall be used exclusively to pay the costs of automating the court clerk and trial court recordkeeping system or converting the trial court document system to micrographics, or both.

SEC. 228. Section 68093 of the Government Code is amended to read:

68093. Except as otherwise provided by law, witness' fees for each day's actual attendance, when legally required to attend a civil action or proceeding in the superior and municipal courts, are thirty-five dollars ($35) a day and mileage actually traveled, both ways, twenty cents ($0.20) a mile.

SEC. 229. Section 68098 of the Government Code is amended to read:

68098. Witness' fees in criminal cases in superior and municipal courts are charges against the same funds as jurors' fees in such cases.

SEC. 230. Section 68108 of the Government Code is amended to read:

68108. (a) With respect to the superior and municipal courts, to the extent that the county's Consolidated Memorandum of Understanding for county employees designates certain days as unpaid furlough days for employees assigned to regular positions in the superior and municipal courts, including all superior court, municipal court, and county employees assigned to the courts, the courts shall not be in session on those days except as ordered by the presiding judge upon a finding by the presiding judge of a judicial emergency as defined in Chapter 1.1 (commencing with Section

68115). On these furlough days, although the clerk's office shall not be open to the public, each court shall permit documents to be filed at a drop box pursuant to subdivision (b), and an appropriate judicial officer shall be available to conduct arraignments and examinations as required pursuant to Section 825 of the Penal Code, and to sign any necessary documents on an emergency basis.

(b) A drop box shall provide for an automated, official time and date stamping mechanism or other means of determining the actual date on which a document was deposited in the drop box.

SEC. 231. Section 68112 of the Government Code is amended to read:

68112. (a) On or before March 1, 1992, each superior and municipal court in each county, in consultation with the local bar, shall prepare and submit to the Judicial Council for review and approval a trial court coordination plan designed to achieve maximum utilization of judicial and other court resources and statewide cost reductions in court operations of at least 3 percent in the 1992–93 fiscal year, a further 2 percent in the 1993–94 fiscal year, and a further 2 percent in the 1994–95 fiscal year, as applicable. The cost reduction shall be based on the prior year actual expenditures, plus any amount reduced from the budget for court operations by a county as a result of any reduction in state funding made pursuant to Section 13308, increased by the percentage change in population for the prior calendar year and the Department of Commerce implicit price deflator for state and local government for the prior calendar year. The coordination plan for each court shall be reviewed and approved by the Judicial Council on or before July 1, 1992. Thereafter, commencing in 1995 and every two years thereafter, courts in each county shall prepare, in consultation with the local bar, and submit a trial court coordination plan to the Judicial Council on or before March 1, for review and approval by July 1. The plans shall comply with rules promulgated by the Judicial Council and shall be designed to achieve maximum utilization of judicial and other resources to accomplish increased efficiency in court operations and increased service to the public. Any plan disapproved by the Judicial Council shall be revised and resubmitted within 60 days of notification of disapproval. The Judicial Council may by rule exempt courts from the requirement of filing a new coordination plan for any year if all courts in the county have (1) totally consolidated administrative functions under a single administrative entity, and (2) adopted and implemented a coordination plan in which all courts share each other's work so that cases in all of the county's courts are substantially assigned without regard to whether a judge is on the superior court or the municipal court, and which provides for procedures that implement that sharing of work.

(b) The coordination plan shall take into consideration the elements specified in standards and rules adopted by the Judicial Council and applicable case processing time standards adopted by

the Judicial Council. The standards adopted by the Judicial Council shall include, but not be limited to, the following:

(1) The use of blanket cross-assignments allowing judges to hear civil, criminal, or other types of cases within the jurisdiction of another court.

(2) The coordinated or joint use of subordinate judicial officers to hear or try matters.

(3) The coordinated, joint use, sharing or merger of court support staff among trial courts within a county or across counties. In a county with a population of less than 100,000 the coordination plan need not involve merger of superior and justice court staffs if the court can reasonably demonstrate that the maintenance of separate administrative staffs would be more cost-effective and provide better service.

(4) The assignment of civil, criminal, or other types of cases for hearing or trial, regardless of jurisdictional boundaries, to any available judicial officer.

(5) The assignment of any type of case to a judge for all purposes commencing with the filing of the case and regardless of jurisdictional boundaries.

(6) The establishment of separate calendars or divisions to hear a particular type of case.

(7) In rural counties, the use of all court facilities for hearings and trials of all types of cases and to accept for filing documents in any case before any court in the county participating in the coordination plan.

(8) The coordinated or joint use of alternative dispute resolution programs such as arbitration.

(9) The unification of the trial courts within a county to the maximum extent permitted by the California Constitution.

(10) The joint development of automated accounting and case-processing systems, including joint use of moneys available under Section 68090.8.

(c) In preparing coordination plans a court or courts in a county may petition the Judicial Council to permit division of the court or courts into smaller administrative units where a courtwide plan would impose an undue burden because of the number of judges or the physical location of the divisions of the court or courts.

(d) In preparing coordination plans, the courts are strongly encouraged to develop a plan that includes all superior and municipal courts in the county.

SEC. 232. Section 68114 of the Government Code is amended to read:

68114. Notwithstanding any other provision of law, the superior and municipal court judges participating in a coordination plan approved pursuant to Section 68112 may select, if the coordination plan so provides, any one of their number to serve as the single presiding judge of all the participating courts by a majority vote of

the judges from all courts sitting as a committee of the whole or in some other manner as set forth in the coordination plan.

The single presiding judge shall have all the powers and duties of the former presiding judges of each of the participating superior and municipal courts. The single presiding judge may be empowered by the coordination plan to sit as the chair of any executive committee formed by the participating courts as part of their coordination plan.

SEC. 233. Section 68114.5 of the Government Code is amended to read:

68114.5. Notwithstanding any other provision of law, the superior and municipal court judges participating in a coordination plan approved pursuant to Section 68112 may establish a single executive committee of judicial officers to oversee, if the coordination plan so provides, the activities of the participating courts. The committee shall include representatives of all participating courts in a manner specified in the coordination plan. The committee shall have such powers and duties as are delegated to it by each participating court in the coordination plan, which may include oversight of the administration of the courts and judicial activities.

SEC. 234. Section 68114.6 of the Government Code is amended to read:

68114.6. Notwithstanding any other provision of law, the superior and municipal court judges participating in a coordination plan approved pursuant to Section 68112 may appoint, if the coordination plan so provides, an executive officer to serve as the chief administrative officer of the participating courts. The executive officer shall hold office at the pleasure of a majority vote of the judges from all of the participating courts sitting as a committee of the whole or as set forth in the coordination plan. The courts shall fix the qualifications of the executive officer. The salary of the executive officer shall be fixed by the participating courts and shall be paid by the county in which the executive officer serves. Each such position shall be exempt from civil service laws.

The participating courts may delegate to the executive officer any administrative powers and duties required to be exercised by the participating courts. The executive officer shall exercise such administrative powers and perform such other duties as may be required of him or her by the participating courts. Any executive officer appointed under this section has the authority of a clerk of any participating superior or municipal court. The executive officer shall perform, or supervise the performance of, the duties of a jury commissioner in the county of any participating superior court. The executive officer shall supervise the secretaries of the judges of the participating courts.

Notwithstanding any other provision of law, any participating superior court may, by local rule, specify which of the powers, duties, and responsibilities required or permitted to be exercised or performed by the county clerk in connection with judicial actions,

proceedings, and records shall be exercised or performed by the executive officer appointed under this section. The county clerk shall be relieved of any obligation imposed on him or her by law with respect to these specified powers, duties, and responsibilities, to the extent the local rule imposes on the executive officer the same powers, duties, and responsibilities.

Any participating superior court having specific statutory authorization to appoint an executive or administrative officer may elect to proceed under its specific authorization or under this section, but not under both.

SEC. 235. Section 68115 of the Government Code is amended to read:

68115. When war, insurrection, pestilence, or other public calamity, or the danger thereof, or the destruction of or danger to the building appointed for holding the court, renders it necessary, or when a large influx of criminal cases resulting from a large number of arrests within a short period of time threatens the orderly operation of a court within a specified county or judicial district, the presiding judge, or if there is none, the sole judge of the superior or municipal court, may request and the Chair of the Judicial Council may, notwithstanding any other provision of law, by order authorize the court to do one or more of the following:

(a) Hold sessions anywhere within the county.

(b) Transfer civil cases pending in the court to another court in the county which has jurisdiction of the subject matter.

(c) Transfer civil cases pending trial in the court to a court having jurisdiction of the subject matter in an adjacent county. No such transfer shall be made pursuant to this subdivision except with the consent of all parties to the case or upon a showing by a party that extreme or undue hardship would result unless the case is transferred for trial. Any civil case so transferred shall be integrated into the existing caseload of the court to which it is transferred pursuant to rules to be provided by the Judicial Council.

(d) Suspend subdivisions (d), (e), and (f) of Section 199 of the Code of Civil Procedure relating to competency to act as a juror when suspension is necessary to obtain a sufficient number of jurors.

(e) After exhausting its own jury panel, draw jurors who reside within the judicial district from the jury panel of the superior court in the county, and thereafter, after exhausting that source, draw jurors from the remainder of the jury panel of the superior court in the county or from jury panels of any other municipal court in the county.

(f) Within the affected county during a state of emergency resulting from a natural or human-made disaster proclaimed by the President of the United States or by the Governor pursuant to Section 8625 of the Government Code, extend the time period provided in Section 825 of the Penal Code within which a defendant charged with a felony offense shall be taken before a magistrate from two days to

not more than seven days, with the number of days to be designated by the Chair of the Judicial Council. This authorization shall be effective for 30 days unless it is extended by a new request and a new order.

(g) Extend the time period provided in Section 859b of the Penal Code for the holding of a preliminary examination from 10 days to not more than 15 days.

(h) Extend the time period provided in Section 1382 of the Penal Code within which the trial must be held by not more than 30 days, but the trial of a defendant in custody whose time is so extended shall be given precedence over all other cases.

(i) Within the affected area of a county during a state of emergency resulting from a natural or human-made disaster proclaimed by the President of the United States or by the Governor pursuant to Section 8625 of the Government Code, extend the time period provided in Sections 632 and 637 of the Welfare and Institutions Code within which a minor shall be given a detention hearing, with the number of days to be designated by the Chair of the Judicial Council. The extension of time shall be for the shortest period of time necessary under the circumstances of the emergency, but in no event shall the time period within which a detention hearing must be given be extended to more than seven days. This authorization shall be effective for 30 days unless it is extended by a new request and a new order. This subdivision shall apply only where the minor has been charged with a felony.

(j) Within the affected county during a state of emergency resulting from a natural or human-made disaster proclaimed by the President of the United States or by the Governor pursuant to Section 8625 of the Government Code, extend the time period provided in Section 657 of the Welfare and Institutions Code within which an adjudication on a juvenile court petition shall be held by not more then 15 days, with the number of days to be designated by the Chair of the Judicial Council. This authorization shall be effective for 30 days unless it is extended by a new request and a new order. This subdivision shall apply only where the minor has been charged with a felony.

SEC. 236. Section 68152 of the Government Code is amended to read:

68152. The trial court clerk may destroy court records under Section 68153 after notice of destruction and if there is no request and order for transfer of the records, except the comprehensive historical and sample superior court records preserved for research under the California Rules of Court, when the following times have expired after final disposition of the case in the categories listed:

(a) Adoption: retain permanently.

(b) Change of name: retain permanently.

(c) Other civil actions and proceedings, as follows:

(1) Except as otherwise specified: 10 years.

(2) Where a party appears by a guardian ad litem: 10 years after termination of the court's jurisdiction.

(3) Domestic violence: same period as duration of the restraining or other orders and any renewals, then retain the restraining or other orders as a judgment; 60 days after expiration of the temporary protective or temporary restraining order.

(4) Eminent domain: retain permanently.

(5) Family law, except as otherwise specified: 30 years.

(6) Harassment: same period as duration of the injunction and any renewals, then retain the injunction as a judgment; 60 days after expiration of the temporary restraining order.

(7) Mental health (Lanterman Developmental Disabilities Services Act and Lanterman-Petris-Short Act): 30 years.

(8) Paternity: retain permanently.

(9) Petition, except as otherwise specified: 10 years.

(10) Real property other than unlawful detainer: retain permanently if the action affects title or an interest in real property.

(11) Small claims: 10 years.

(12) Unlawful detainer: one year if judgment is for possession of the premises; 10 years if judgment is for money.

(d) Notwithstanding subdivision (c), any civil or small claims case in the trial court:

(1) Involuntarily dismissed by the court for delay in prosecution or failure to comply with state or local rules: one year.

(2) Voluntarily dismissed by a party without entry of judgment: one year.

Notation of the dismissal shall be made on the civil index of cases or on a separate dismissal index.

(e) Criminal.

(1) Capital felony (murder with special circumstances where the prosecution seeks the death penalty): retain permanently. If the charge is disposed of by acquittal or a sentence less than death, the case shall be reclassified.

(2) Felony, except as otherwise specified: 75 years.

(3) Felony, except capital felony, with court records from the initial complaint through the preliminary hearing or plea and for which the case file does not include final sentencing or other final disposition of the case because the case was bound over to the superior court: five years.

(4) Misdemeanor, except as otherwise specified: five years.

(5) Misdemeanor alleging a violation of the Vehicle Code, except as otherwise specified: three years.

(6) Misdemeanor alleging a violation of Section 23103, 23152, or 23153 of the Vehicle Code: seven years.

(7) Misdemeanor alleging a violation of Section 14601, 14601.1, 20002, 23104, or 23109 of the Vehicle Code: five years.

(8) Misdemeanor alleging a marijuana violation under subdivision (b), (c), (d), or (e) of Section 11357 of the Health and Safety Code,

or subdivision (b) of Section 11360 of the Health and Safety Code in accordance with the procedure set forth in Section 11361.5 of the Health and Safety Code: records shall be destroyed two years from the date of conviction or from the date of arrest if no conviction.

(9) Misdemeanor, infraction, or civil action alleging a violation of the regulation and licensing of dogs under Sections 30951 to 30956, inclusive, of the Food and Agricultural Code or violation of any other local ordinance: three years.

(10) Infraction, except as otherwise specified: three years.

(11) Parking infractions, including alleged violations under the stopping, standing, and parking provisions set forth in Chapter 9 (commencing with Section 22500) of Division 11 of the Vehicle Code: two years.

(f) Habeas corpus: same period as period for retention of the records in the underlying case category.

(g) Juvenile.

(1) Dependent (Section 300 of the Welfare and Institutions Code): upon reaching age 28 or on written request shall be released to the juvenile five years after jurisdiction over the person has terminated under subdivision (a) of Section 826 of the Welfare and Institutions Code. Sealed records shall be destroyed upon court order five years after the records have been sealed pursuant to subdivision (c) of Section 389 of the Welfare and Institutions Code.

(2) Ward (Section 601 of the Welfare and Institutions Code): upon reaching age 21 or on written request shall be released to the juvenile five years after jurisdiction over the person has terminated under subdivision (a) of Section 826 of the Welfare and Institutions Code. Sealed records shall be destroyed upon court order five years after the records have been sealed under subdivision (d) of Section 781 of the Welfare and Institutions Code.

(3) Ward (Section 602 of the Welfare and Institutions Code): upon reaching age 38 under subdivision (a) of Section 826 of the Welfare and Institutions Code. Sealed records shall be destroyed upon court order when the subject of the record reaches the age of 38 under subdivision (d) of Section 781 of the Welfare and Institutions Code.

(4) Traffic and some nontraffic misdemeanors and infractions (Section 601 of the Welfare and Institutions Code): upon reaching age 21 or five years after jurisdiction over the person has terminated under subdivision (c) of Section 826 of the Welfare and Institutions Code. May be microfilmed or photocopied.

(5) Marijuana misdemeanor under subdivision (e) of Section 11357 of the Health and Safety Code in accordance with procedures specified in subdivision (a) of Section 11361.5 of the Health and Safety Code: upon reaching age 18 the records shall be destroyed.

(h) Probate.

(1) Conservatorship: 10 years after decree of termination.

(2) Guardianship: 10 years after the age of 18.

(3) Probate, including probated wills, except as otherwise specified: retain permanently.

(i) Court records of the appellate division of the superior court: five years.

(j) Other records.

(1) Applications in forma pauperis: same period as period for retention of the records in the underlying case category.

(2) Arrest warrant: same period as period for retention of the records in the underlying case category.

(3) Bench warrant: same period as period for retention of the records in the underlying case category.

(4) Bond: three years after exoneration and release.

(5) Coroner's inquest report: same period as period for retention of the records in the underlying case category; if no case, then permanent.

(6) Court orders not associated with an underlying case, such as orders for destruction of court records for telephone taps, or to destroy drugs, and other miscellaneous court orders: three years.

(7) Court reporter notes: 10 years after the notes have been taken in criminal and juvenile proceedings and five years after the notes have been taken in all other proceedings, except notes reporting proceedings in capital felony cases (murder with special circumstances where the prosecution seeks the death penalty and the sentence is death), including notes reporting the preliminary hearing, which shall be retained permanently, unless the Supreme Court on request of the court clerk authorizes the destruction.

(8) Electronic recordings made as the official record of the oral proceedings under the California Rules of Court: any time after final disposition of the case in infraction and misdemeanor proceedings, 10 years in all other criminal proceedings, and five years in all other proceedings.

(9) Electronic recordings not made as the official record of the oral proceedings under the California Rules of Court: any time either before or after final disposition of the case.

(10) Index, except as otherwise specified: retain permanently.

(11) Index for cases alleging traffic violations: same period as period for retention of the records in the underlying case category.

(12) Judgments within the jurisdiction of the superior court other than in a limited civil case: retain permanently.

(13) Judgments within the jurisdiction of the municipal court or of the superior court in a limited civil case: same period as period for retention of the records in the underlying case category.

(14) Minutes: same period as period for retention of the records in the underlying case category.

(15) Naturalization index: retain permanently.

(16) Ninety-day evaluation (under Section 1203.03 of the Penal Code): same period as period for retention of the records in the

underlying case category, or period for completion or termination of probation, whichever is longer.

(17) Register of actions or docket: same period as period for retention of the records in the underlying case category, but in no event less than 10 years for civil and small claims cases.

(18) Search warrant: 10 years, except search warrants issued in connection with a capital felony case defined in paragraph (7), which shall be retained permanently.

(k) Retention of any of the court records under this section shall be extended as follows:

(1) By order of the court on its own motion, or on application of a party or any interested member of the public for good cause shown and on such terms as are just. No fee shall be charged for making the application.

(2) Upon application and order for renewal of the judgment to the extended time for enforcing the judgment.

SEC. 236.5. Section 68152 of the Government Code is amended to read:

68152. The trial court clerk may destroy court records under Section 68153 after notice of destruction and if there is no request and order for transfer of the records, except the comprehensive historical and sample superior court records preserved for research under the California Rules of Court, when the following times have expired after final disposition of the case in the categories listed:

(a) Adoption: retain permanently.

(b) Change of name: retain permanently.

(c) Other civil actions and proceedings, as follows:

(1) Except as otherwise specified: 10 years.

(2) Where a party appears by a guardian ad litem: 10 years after termination of the court's jurisdiction.

(3) Domestic violence: same period as duration of the restraining or other orders and any renewals, then retain the restraining or other orders as a judgment; 60 days after expiration of the temporary protective or temporary restraining order.

(4) Eminent domain: retain permanently.

(5) Family law, except as otherwise specified: 30 years.

(6) Harassment: same period as duration of the injunction and any renewals, then retain the injunction as a judgment; 60 days after expiration of the temporary restraining order.

(7) Mental health (Lanterman Developmental Disabilities Services Act and Lanterman-Petris-Short Act): 30 years.

(8) Paternity: retain permanently.

(9) Petition, except as otherwise specified: 10 years.

(10) Real property other than unlawful detainer: retain permanently if the action affects title or an interest in real property.

(11) Small claims: 10 years.

(12) Unlawful detainer: one year if judgment is for possession of the premises; 10 years if judgment is for money.

(d) Notwithstanding subdivision (c), any civil or small claims case in the trial court:

(1) Involuntarily dismissed by the court for delay in prosecution or failure to comply with state or local rules: one year.

(2) Voluntarily dismissed by a party without entry of judgment: one year.

Notation of the dismissal shall be made on the civil index of cases or on a separate dismissal index.

(e) Criminal.

(1) Capital felony (murder with special circumstances where the prosecution seeks the death penalty): retain permanently. If the charge is disposed of by acquittal or a sentence less than death, the case shall be reclassified.

(2) Felony, except as otherwise specified: 75 years.

(3) Felony, except capital felony, with court records from the initial complaint through the preliminary hearing or plea and for which the case file does not include final sentencing or other final disposition of the case because the case was bound over to the superior court: five years.

(4) Misdemeanor, except as otherwise specified: five years.

(5) Misdemeanor alleging a violation of the Vehicle Code, except as otherwise specified: three years.

(6) Misdemeanor alleging a violation of Section 23103, 23152, or 23153 of the Vehicle Code: seven years.

(7) Misdemeanor alleging a violation of Section 14601, 14601.1, 20002, 23104, or 23109 of the Vehicle Code: five years.

(8) Misdemeanor alleging a marijuana violation under subdivision (b), (c), (d), or (e) of Section 11357 of the Health and Safety Code, or subdivision (b) of Section 11360 of the Health and Safety Code in accordance with the procedure set forth in Section 11361.5 of the Health and Safety Code: records shall be destroyed two years from the date of conviction or from the date of arrest if no conviction.

(9) Misdemeanor, infraction, or civil action alleging a violation of the regulation and licensing of dogs under Sections 30951 to 30956, inclusive, of the Food and Agricultural Code or violation of any other local ordinance: three years.

(10) Infraction, except as otherwise specified: three years.

(11) Parking infractions, including alleged violations under the stopping, standing, and parking provisions set forth in Chapter 9 (commencing with Section 22500) of Division 11 of the Vehicle Code: two years.

(f) Habeas corpus: same period as period for retention of the records in the underlying case category.

(g) Juvenile.

(1) Dependent (Section 300 of the Welfare and Institutions Code): upon reaching age 28 or on written request shall be released to the juvenile five years after jurisdiction over the person has terminated under subdivision (a) of Section 826 of the Welfare and

Institutions Code. Sealed records shall be destroyed upon court order five years after the records have been sealed pursuant to subdivision (c) of Section 389 of the Welfare and Institutions Code.

(2) Ward (Section 601 of the Welfare and Institutions Code): upon reaching age 21 or on written request shall be released to the juvenile five years after jurisdiction over the person has terminated under subdivision (a) of Section 826 of the Welfare and Institutions Code. Sealed records shall be destroyed upon court order five years after the records have been sealed under subdivision (d) of Section 781 of the Welfare and Institutions Code.

(3) Ward (Section 602 of the Welfare and Institutions Code): upon reaching age 38 under subdivision (a) of Section 826 of the Welfare and Institutions Code. Sealed records shall be destroyed upon court order when the subject of the record reaches the age of 38 under subdivision (d) of Section 781 of the Welfare and Institutions Code.

(4) Traffic and some nontraffic misdemeanors and infractions (Section 601 of the Welfare and Institutions Code): upon reaching age 21 or five years after jurisdiction over the person has terminated under subdivision (c) of Section 826 of the Welfare and Institutions Code. May be microfilmed or photocopied.

(5) Marijuana misdemeanor under subdivision (e) of Section 11357 of the Health and Safety Code in accordance with procedures specified in subdivision (a) of Section 11361.5 of the Health and Safety Code: upon reaching age 18 the records shall be destroyed.

(h) Probate.

(1) Conservatorship: 10 years after decree of termination.

(2) Guardianship: 10 years after the age of 18.

(3) Probate, including probated wills, except as otherwise specified: retain permanently.

(i) Court records of the appellate division of the superior court: five years.

(j) Other records.

(1) Applications in forma pauperis: any time after the disposition of the underlying case.

(2) Arrest warrant: same period as period for retention of the records in the underlying case category.

(3) Bench warrant: same period as period for retention of the records in the underlying case category.

(4) Bond: three years after exoneration and release.

(5) Coroner's inquest report: same period as period for retention of the records in the underlying case category; if no case, then permanent.

(6) Court orders not associated with an underlying case, such as orders for destruction of court records for telephone taps, or to destroy drugs, and other miscellaneous court orders: three years.

(7) Court reporter notes: 10 years after the notes have been taken in criminal and juvenile proceedings and five years after the notes have been taken in all other proceedings, except notes reporting

proceedings in capital felony cases (murder with special circumstances where the prosecution seeks the death penalty and the sentence is death), including notes reporting the preliminary hearing, which shall be retained permanently, unless the Supreme Court on request of the court clerk authorizes the destruction.

(8) Electronic recordings made as the official record of the oral proceedings under the California Rules of Court: any time after final disposition of the case in infraction and misdemeanor proceedings, 10 years in all other criminal proceedings, and five years in all other proceedings.

(9) Electronic recordings not made as the official record of the oral proceedings under the California Rules of Court: any time either before or after final disposition of the case.

(10) Index, except as otherwise specified: retain permanently.

(11) Index for cases alleging traffic violations: same period as period for retention of the records in the underlying case category.

(12) Judgments within the jurisdiction of the superior court other than in a limited civil case: retain permanently.

(13) Judgments within the jurisdiction of the municipal court or of the superior court in a limited civil case: same period as period for retention of the records in the underlying case category.

(14) Minutes: same period as period for retention of the records in the underlying case category.

(15) Naturalization index: retain permanently.

(16) Ninety-day evaluation (under Section 1203.03 of the Penal Code): same period as period for retention of the records in the underlying case category, or period for completion or termination of probation, whichever is longer.

(17) Register of actions or docket: same period as period for retention of the records in the underlying case category, but in no event less than 10 years for civil and small claims cases.

(18) Search warrant: 10 years, except search warrants issued in connection with a capital felony case defined in paragraph (7), which shall be retained permanently.

(k) Retention of any of the court records under this section shall be extended as follows:

(1) By order of the court on its own motion, or on application of a party or any interested member of the public for good cause shown and on such terms as are just. No fee shall be charged for making the application.

(2) Upon application and order for renewal of the judgment to the extended time for enforcing the judgment.

SEC. 237. Section 68202.5 of the Government Code is repealed.

SEC. 238. Section 68206.2 of the Government Code is amended to read:

68206.2. (a) On and after January 1, 1990, the state shall reimburse each small county which is not an option county under the Brown-Presley Trial Court Funding Act (Chapter 12 (commencing

with Section 77000) of this title), for the cost of salary and per diem for any substitute judge assigned to replace a judge disqualified from acting as a judge while there is pending a recommendation to the Supreme Court by the Commission on Judicial Performance for removal or retirement of the judge pursuant to subdivision (a) of Section 18 of Article VI of the California Constitution, beginning with the salary and per diem for the seventh month following the disqualification.

(b) For purposes of this section, a "small county" is one which has a total of nine or fewer superior and municipal court judges.

SEC. 239. Section 68505 of the Government Code is amended to read:

68505. The county clerks and clerks of all courts of record shall cooperate with the Judicial Council. They shall keep such records and make such reports to the council, in such manner and at such times, as the Chair of the Judicial Council requires, respecting the condition and manner of disposal of judicial business in their respective courts.

SEC. 240. Section 68513 of the Government Code is amended to read:

68513. The Judicial Council shall provide for the uniform entry, storage, and retrieval of court data relating to civil cases in superior court other than limited civil cases by means provided for in this section, in addition to any other data relating to court administration, including all of the following:

(a) The category type of civil case, such as contract or personal injury-death-property damage by motor vehicle.

(b) The time from filing of the action to settlement.

(c) The type of settlement procedure, if any, which contributed to the settlement disposition.

(d) The character and amount of any settlement made as to each party litigant, but preserving the confidentiality of such information if the settlement is not otherwise public.

(e) The character and amount of any judgments rendered by court and jury trials for comparison with settled cases.

(f) The extent to which damages prayed for compare to settlement or judgment in character and amount.

(g) The extent to which collateral sources have contributed, or will contribute, financially to satisfaction of the judgment or settlement.

Provision for the uniform entry, storage, and retrieval of court data may be by use of litigant statements or forms, if available, or by collection and analysis of statistically reliable samples.

The Judicial Council shall report to the Legislature on or before January 1, 1998, and annually thereafter on the uniform entry, storage, and retrieval of court data as provided for in this section. The Legislature shall evaluate and adjust the level of funds available to pay the costs of automating trial court recordkeeping systems,

pursuant to Section 68090.8, for noncompliance with the requirements of this section.

SEC. 241. Section 68540 of the Government Code is amended to read:

68540. The state shall pay the additional compensation of a judge of a municipal court assigned to a superior court.

SEC. 242. Section 68541 of the Government Code is repealed.

SEC. 243. Section 68542 of the Government Code is amended to read:

68542. The expenses for travel, board, and lodging of each judge assigned to a superior or municipal court in a county other than that in which he or she regularly sits shall be paid by the state under the rules adopted by the Board of Control which are applicable to officers of the state provided for in Article VI of the California Constitution while traveling on official state business.

SEC. 244. Section 68542.5 of the Government Code is amended to read:

68542.5. Any judge of a superior or municipal court sitting in another court in the same county under assignment by the Chair of the Judicial Council shall receive from such county the amount of actual and necessary traveling expenses incurred while traveling between home and the courtroom unless the courtrooms are within five miles of each other.

SEC. 245. Section 68546 of the Government Code is amended to read:

68546. If the Chair of the Judicial Council assigns a judge of a municipal court in a county to sit on the superior court of the same county, the presiding judge of the municipal court may, with the consent of the presiding judge of the superior court, also assign the court reporter, deputy clerk and deputy marshal, or any of them, of the municipal court from which that judge is assigned to act as court reporter, deputy clerk and deputy sheriff, respectively, for the superior court during the period for which the judge is assigned. During the period for which the court reporter, deputy clerk, or deputy marshal is assigned, they shall receive the same salary as a court reporter, deputy clerk, or deputy sheriff, respectively, for the superior court. If there be no presiding judge, the senior or sole judge may make or consent to the assignment of the attachés. This section shall not apply to the assignment of the deputy clerk or deputy marshal in any county until the board of supervisors by ordinance has adopted its provisions. An ordinance is not required where the deputy clerk and deputy marshal consent to serve as part of their regular duties without additional compensation.

SEC. 245.4. Section 68547 of the Government Code, as amended by Chapter 850 of the Statutes of 1997, is amended to read:

68547. (a) For the purposes of this article, a judge is deemed to serve or sit under assignment on each day during which it is necessary for him or her on account of the assignment to serve in a substantial

way on the court to which assigned, to travel to or from such court, or to be absent from his or her residence. If a judge so serves under assignment in one or more courts during all days other than Saturdays, Sundays, and holidays in any period of 30 or more consecutive days (inclusive of Saturdays, Sundays, and holidays), he or she shall be deemed also to have served or sat in such court or courts on all Saturdays, Sundays, and holidays during or immediately preceding that period.

(b) A judge of a municipal court is deemed to have served under assignment in the superior court on any day when both of the following applies:

(1) A cross-assignment issued by the Chief Justice is in effect and the judge's workload is assigned pursuant to a judicial and administrative coordination plan approved by the Judicial Council pursuant to procedures set forth in rules of court and consistent with Section 68112.

(2) The Judicial Council has certified that cases in the court's jurisdiction are assigned pursuant to a uniform countywide or regional system for assignment of cases among superior and municipal courts which maximizes the utilization of all judicial officers in that county or region.

(c) The Judicial Council shall adopt rules as necessary to implement this section, including criteria for approval of judicial and administrative coordination plans.

(d) If a judge who serves his or her court on a part-time basis has completed the business of the home court for all days affected by any assignment, compensation attributable to the home court shall only be deducted from the amounts to be paid pursuant to Section 68540.7 for the days the judge is serving on assignment to the extent necessary to limit the assigned judge's total judicial compensation for the month to the amount earned by a regular judge of the court to which the judge is assigned.

(e) This section shall be repealed on January 1, 2000, unless a later enacted statute enacted before that date extends or deletes that date.

SEC. 245.5. Section 68547 of the Government Code, as amended by Chapter 146 of the Statutes of 1998, is amended to read:

68547. (a) For the purposes of this article, a judge or justice is deemed to serve or sit under assignment on each day during which it is necessary for him or her on account of the assignment to serve in a substantial way on the court to which assigned, to travel to or from such court, or to be absent from his or her residence. If a judge so serves under assignment in one or more courts during all days other than Saturdays, Sundays, and holidays in any period of 30 or more consecutive days (inclusive of Saturdays, Sundays, and holidays), he or she shall be deemed also to have served or sat in such court or courts on all Saturdays, Sundays, and holidays during or immediately preceding that period.

If a judge who serves his or her court on a part-time basis has completed the business of the home court for all days affected by any assignment, compensation attributable to the home court shall only be deducted from the amounts to be paid pursuant to Section 68540.7 for the days the judge is serving on assignment to the extent necessary to limit the assigned judge's total judicial compensation for the month to the amount earned by a regular judge of the court to which the judge is assigned.

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

SEC. 246. Section 68551 of the Government Code is amended to read:

68551. The Judicial Council is authorized to conduct institutes and seminars from time to time, either regionally or on a statewide basis, for the purpose of orienting judges to new judicial assignments, keeping them informed concerning new developments in the law and promoting uniformity in judicial procedure. Such institutes and seminars shall include, without being limited thereto, consideration of juvenile court proceedings, sentencing practices in criminal cases and the handling of traffic cases. Actual and necessary expenses incurred by superior and municipal court judges at any such institute or seminar shall be a charge against the county to the extent that funds are available therefor.

SEC. 247. Section 68620 of the Government Code is amended to read:

68620. (a) Operative July 1, 1992, each municipal court shall establish a delay reduction program in consultation with the local bar that is consistent with the provisions of this article. In its discretion, the Judicial Council may assist in the development of, or may develop and adopt, any or all procedures, standards, or policies for a delay reduction program in municipal and justice courts on a statewide basis which are consistent with the provisions of the Trial Court Delay Reduction Act.

(b) Actions and proceedings subject to the provisions of Chapter 5.5 (commencing with Section 116.110) of Title 1 of Part 1 of the Code of Civil Procedure or provisions of Chapter 4 (commencing with Section 1159) of Title 3 of Part 3 of the Code of Civil Procedure shall not be assigned to or governed by the provisions of any delay reduction program established pursuant to the section.

(c) It is the intent of the Legislature that the civil discovery in actions and proceedings subject to a program established pursuant to Article 2 (commencing with Section 90) of Chapter 5 of Title 1 of Part 1 of the Code of Civil Procedure shall be governed by the times and procedures specified in that article. Civil discovery in these actions and proceedings shall not be affected by the provisions of any delay reduction program adopted pursuant to this section.

SEC. 248. Section 68902 of the Government Code is amended to read:

68902. Such opinions of the Supreme Court, of the courts of appeal, and of the appellate divisions of the superior courts as the Supreme Court may deem expedient shall be published in the official reports. The reports shall be published under the general supervision of the Supreme Court.

SEC. 249. Section 69510 of the Government Code is amended to read:

69510. A majority of the judges of a superior court may order sessions of the court to be held at any place where a municipal court holds sessions within the county or, in a county in which there is no municipal court, where there is a court facility. The order shall be filed with the county clerk and published as the judges may prescribe.

SEC. 250. Section 69741.7 of the Government Code is repealed.

SEC. 251. Section 69744.5 of the Government Code is amended to read:

69744.5. When the judge, or a majority of the judges, of the superior court deem it necessary or advisable, by order filed with the county clerk and published as the judge or judges prescribe, the judge or judges may direct that the court be held at least once a week at any designated place in the county, not less than 45 miles distant from the county seat, measured by air line. The place designated shall be within a judicial district, or former district in a county in which there is no municipal court, composed wholly of unincorporated territory, with a population of more than 40,000 as determined pursuant to Section 71043. The judge or a majority of the judges may limit the type of judicial proceedings which may be heard by the court at such place to probate matters and matters relating to domestic relations.

SEC. 252. Section 69746.5 of the Government Code is amended to read:

69746.5. In a county of the 14th class, at least one session of the superior court may be held at a location designated by the board of supervisors which is not less than 40 miles, nor more than 50 miles, from the site of the county courthouse. However, at such time on or after July 1, 1990, as the board of supervisors finds that there are sufficient funds for this purpose, the board of supervisors shall designate a location therefor which is within a judicial district, or former district in a county in which there is no municipal court, with a population of more than 40,000 as determined pursuant to Section 71043.

SEC. 253. Section 69753 of the Government Code is amended to read:

69753. (a) Notwithstanding any other provision of this code, the presiding or sole judge of a superior court may, if the session is held in furtherance of a coordination plan approved under Section 68112 or in the absence of a timely objection in a civil case or proceeding or with the express consent of the parties in a criminal action, direct that a session of the court be held at any place in the county where a municipal court regularly conducts sessions, if:

(1) The judge presiding at the superior court session is a judge of a municipal court or a retired judge assigned to serve as a superior court judge under Section 6 of Article VI of the California Constitution.

(2) The presiding or sole judge of the municipal court has informed the presiding judge of the superior court that the superior court session will not interfere with the normal conduct of municipal court business.

(b) The Judicial Council shall provide by rule for the timely filing of any objection to hearing a civil matter at a municipal court location, and for obtaining the consent of the parties in a criminal action.

SEC. 254. Section 69957 of the Government Code is amended to read:

69957. Whenever the services of an official reporter of the superior court are not required in the actual prosecution of the business of the court within the purview of the duties of such reporter as an official reporter of the superior court, the presiding judge of the superior court may, if so requested by the presiding judge of any municipal court judge within the county, assign any such official reporter of the superior court to act pro tempore as an official reporter of the municipal court within the same county. Any such assignment shall be subject to the provisions of Article 5 (commencing with Section 72190) of Chapter 8 of Title 8 of this code.

SEC. 255. Section 70140 is added to the Government Code, to read:

70140. (a) Except as provided in subdivision (b) and notwithstanding any other provision of law, the superior court in any county with a unified superior court pursuant to subdivision (e) of Section 5 of Article VI of the California Constitution may establish the salary of a former municipal court commissioner or referee at a salary not to exceed that of a superior court commissioner in that court, other than a commissioner established pursuant to subdivision (e) of Section 70141, subject to certification by the court that it is able to support the proposed salary levels within the court's current allocation. In a county where no superior court commissioner or referee existed, other than a commissioner established pursuant to subdivision (e) of Section 70141, prior to the unification of the superior and municipal courts, the salary of a commissioner or referee shall be set at a rate not to exceed the percentage of a superior court judge's salary that the commissioner or referee received of a municipal court judge's salary prior to unification.

(b) No commissioner shall have his or her current salary reduced below that salary in effect on June 1, 1998, by application of this section.

SEC. 255.5. Section 70141 of the Government Code is amended to read:

70141. (a) To assist the court in disposing of its business connected with the administration of justice, the superior court of any city and county may appoint not exceeding 10 commissioners, and the superior court of every county, except a county with a population of 4,000,000 or over, may appoint one commissioner. Each person so appointed shall be designated as "court commissioner" of the county.

(b) In addition to the court commissioners authorized by subdivision (a) or any other provision of law, either the superior court or the municipal court, but not both, of any county or city and county may appoint one additional commissioner, at the same rate of compensation as the other commissioner or commissioners for that court, upon adoption of a resolution by the board of supervisors pursuant to subdivision (c).

(c) The county or city and county shall be bound by, and the resolution adopted by the board of supervisors shall specifically recognize, the following conditions:

(1) The county or city and county has sufficient funds for the support of the position and any staff who will provide direct support to the position, agrees to assume any and all additional costs that may result therefrom, and agrees that no state funds shall be made available, or shall be used, in support of this position or any staff who provide direct support to this position.

(2) The additional commissioner shall not be deemed a judicial position for purposes of calculating trial court funding pursuant to Section 77202.

(3) The salary for this position and for any staff who provide direct support to this position shall not be considered as part of court operations for purposes of Sections 77003 and 77204.

(4) The county or city and county agrees not to seek funding from the state for payment of the salary, benefits, or other compensation for such a commissioner or for any staff who provide direct support to such a commissioner.

(d) The court may provide that the additional commissioner may perform all duties authorized for a commissioner of that court in the county. In a county or city and county that has undertaken a consolidation of the trial courts, the additional commissioner shall be appointed by the superior or municipal courts pursuant to the consolidation agreement.

(e) In addition to the court commissioners authorized by subdivisions (a) and (b), the superior court of any county or city and county shall appoint additional commissioners pursuant to Sections 4251 and 4252 of the Family Code. These commissioners shall receive a salary equal to 85 percent of a superior court judge's salary. These commissioners shall not be deemed a court operation for purposes of Section 77003.

SEC. 256. Chapter 5.1 (commencing with Section 70200) of Title 8 of the Government Code is repealed.

SEC. 257. Chapter 5.1 (commencing with Section 70200) is added to Title 8 of the Government Code, to read:

CHAPTER 5.1. UNIFICATION OF MUNICIPAL AND SUPERIOR COURTS

Article 1. Unification Voting Procedure

70200. (a) The municipal and superior courts in a county shall be unified on a majority vote of superior court judges and a majority vote of municipal court judges in the county, pursuant to the procedures provided in this article.

(b) The vote shall be conducted by the Judicial Council or, if authorized by the Judicial Council, the county's registrar of voters.

(c) The Judicial Council may adopt rules not inconsistent with this article for the conduct of the vote, including but not limited to rules governing the frequency of vote calls, manner of voting, duration of the voting period, and selection of the operative date of unification.

70201. (a) The Judicial Council or registrar of voters shall certify the results of a vote to unify the municipal courts and the superior courts in a county.

(b) Unification of the municipal and superior courts in a county requires an affirmative vote of a majority of all superior court judges in the county eligible to vote and a majority of all municipal court judges in the county eligible to vote.

(c) On certification, a vote in favor of unification of the municipal and superior courts in a county is final and may not be rescinded or revoked by a subsequent vote.

70202. Unification of the municipal and superior courts in a county shall occur on the earlier of the date specified in the unification vote or 180 days following certification of the vote for unification.

Article 2. Transitional Provisions for Unification

70210. The Judicial Council shall adopt rules of court not inconsistent with statute for:

(a) The orderly conversion of proceedings pending in municipal courts to proceedings in superior courts, and for proceedings commenced in superior courts on and after the date the municipal and superior courts in a county are unified.

(b) Selection of persons to coordinate implementation activities for the unification of municipal courts with superior courts in a county, including:

(1) Selection of a presiding judge for the unified superior court.

(2) Selection of a court executive officer for the unified superior court.

(3) Appointment of court committees or working groups to assist the presiding judge and court executive officer in implementing unification.

(c) The authority of the presiding judge, in conjunction with the court executive officer and appropriate individuals or working groups of the unified superior court, to act on behalf of the court to implement unification.

(d) Preparation and submission of a written personnel plan to the judges of a unified superior court for adoption.

(e) Preparation of local court rules necessary to facilitate the orderly conversion of proceedings pending in municipal courts to proceedings in superior courts, and for proceedings commenced in superior courts on and after the date the municipal and superior courts in a county are unified. These rules shall, on the date the municipal and superior courts in a county are unified, be the rules of the unified superior court.

(f) Other necessary activities to facilitate the transition to a unified superior court.

70211. When the municipal and superior courts in a county are unified:

(a) The judgeships in each municipal court in that county are abolished and the previously selected municipal court judges become judges of the superior court in that county. Until revised by statute, the total number of judgeships in the unified superior court shall equal the previously authorized number of judgeships in the municipal court and superior court combined.

(b) The term of office of a previously selected municipal court judge is not affected by taking office as a judge of the superior court. A previously selected municipal court judge is entitled to hold office for the same time period as if the judge had remained a judge of the municipal court. Until a previously selected municipal court judge leaves office or a successor is elected and qualifies, the time for election of a successor shall be governed by the law otherwise applicable to selection of municipal court judges. Thereafter, selection of a successor to the office shall be governed by the law governing selection of superior court judges.

(c) The 10-year membership or service requirement of Section 15 of Article VI of the California Constitution does not apply to a previously selected municipal court judge.

70212. Except as provided by statute to the contrary, in a county in which the municipal and superior courts become unified, the following shall occur automatically in each preexisting municipal and superior court:

(a) Previously selected officers (including subordinate judicial officers), employees, and other personnel who serve the court become the officers and employees of the superior court.

(b) Preexisting court locations are retained as superior court locations.

(c) Preexisting court records become records of the superior court.

(d) Pending actions, trials, proceedings, and other business of the court become pending in the superior court under the procedures previously applicable to the matters in the court in which the matters were pending.

(e) Matters of a type previously subject to rehearing by a superior court judge remain subject to rehearing by a superior court judge, other than the judge who originally heard the matter.

(f) Penal Code procedures that necessitate superior court review of, or action based on, a ruling or order by a municipal court judge shall be performed by a superior court judge other than the judge who originally made the ruling or order.

(g) Subpoenas, summons of jurors, and other process issued by the court shall be enforceable by the superior court.

(h) The superior court and each judge of the superior court has all the powers and shall perform all of the acts that were by law conferred on, or required of, any court superseded by the superior court and any judge of the superseded court, and all laws applicable to the superseded court not inconsistent with the statutes governing unification of the municipal and superior courts apply to the superior court and to each judge of the court.

70213. (a) In a county in which the municipal and superior courts become unified, until revised by the Judicial Council, forms for proceedings within the jurisdiction of municipal courts may be used as if the proceedings were in a municipal court.

(b) The Judicial Council may adopt rules resolving any problem that may arise in the conversion of statutory references from the municipal court to the superior court in a county in which the municipal and superior courts become unified.

70214. When the municipal and superior courts in a county are unified:

(a) Until revised by statute, the total number of authorized court commissioners in the unified superior court shall equal the previously authorized number of court commissioners in the municipal court and superior court combined.

(b) Until revised by statute, the total number of authorized traffic referees or traffic trial commissioners in the unified superior court shall equal the previously authorized number of court traffic referees or traffic trial commissioners in the municipal court.

(c) The superior court or its judges may make appointments previously authorized to be made by a municipal court or its judges.

(d) Commissioners and referees of the unified superior court shall have all of the powers and authority of commissioners and referees of superior courts and of municipal courts.

70215. This article and other statutes governing unification of the municipal and superior courts in a county shall prevail over any inconsistent statutes otherwise applicable to the municipal or

superior courts in the county, including, but not limited to, statutes governing the number of judges, selection of a presiding judge, selection of a court executive officer, and employment of officers (including subordinate judicial officers), employees, and other personnel who serve the court.

70216. (a) If unification of the municipal and superior courts within a county occurs during an election for the office of municipal court judge, the conduct of the direct primary election and general election shall be governed by the law otherwise applicable to the election of a municipal court judge.

(b) A judge elected pursuant to this section shall be deemed to be a previously selected municipal court judge within the meaning of subdivision (b) of Section 23 of Article VI of the California Constitution.

(c) As used in this section, "during an election" means during the period beginning on the 127th day before a direct primary election and ending on the day of the general election.

70217. On unification of the municipal and superior courts in a county, until adoption of a written personnel plan by the judges of the unified superior court and approval of the plan by the Legislature:

(a) Upon unification, previously selected officers, employees, and other personnel who serve the courts shall become the officers, employees, and other personnel of the unified superior court at their existing or equivalent classifications, and at their existing salaries and benefits that include, but are not limited to, accrued and unused vacation, sick leave, personal leave, health and pension plans.

(b) Permanent employees of the municipal and superior courts on the effective date of unification shall be deemed qualified, and no other qualifications shall be required for employment or retention. Probationary employees on the effective date of unification shall retain their probationary status and rights, and shall not be deemed to have transferred so as to require serving a new probationary period.

(c) Employment seniority of an employee of the municipal or superior courts on the effective date of unification shall be counted toward seniority in the unified superior court, and all time spent in the same, equivalent, or higher classification shall be counted toward classification seniority.

(d) No officer or employee with peace officer status shall lose that status as a result of unification, and any officer or employee authorized to perform notice and process services or court security services in the municipal court is authorized to perform those services in the unified superior court.

70218. When the municipal and superior court in a county are unified:

(a) Sections 3501.5, 68650, 68651, 68652, 68653, 68654, and 68655 shall be fully applicable to the county and unified superior court.

(b) Sections 2201 to 2210, inclusive, of the California Rules of Court shall remain in effect and shall be fully applicable to the county and unified superior court.

(c) An employee organization that has been previously recognized as a representative of a group of court employees or the exclusive representative of an established appropriate bargaining unit of court employees, either by the county or municipal court or superior court shall continue to be recognized as a representative or the exclusive representative of the same employees of the county or unified superior court.

(d) An existing memorandum of understanding or agreement between the county, a municipal court, or a superior court shall remain in effect and be fully binding on the county, the unified superior court, and the employee organization involved for the term of the agreement. However, in the event of an election held under paragraph (2) of subdivision (f), a memorandum of understanding or agreement with an employee organization that is no longer recognized as the exclusive representative shall continue in effect and be administered by the employee organization that receives a majority of votes in the election and is certified or recognized pursuant to paragraph (2) of subdivision (f), provided that the memorandum of understanding or agreement shall be subject to reopening on request of either the unified superior court or the newly certified or recognized employee organization, provided that no changes in that memorandum of understanding or agreement may be made during its term without mutual agreement of the unified superior court and the newly certified or recognized employee organization, and (2) a memorandum of understanding or agreement with an employee organization that receives a majority of votes in the election shall remain in full force and effect until its expiration or until replaced by a subsequent memorandum of understanding or agreement.

(e) Nothing in this article shall disturb or affect any court- or county-established appropriate bargaining unit or memorandum of understanding or agreement between an employee organization and a county or court, unless subdivision (f) applies.

(f) (1) Where there is more than one employee organization that has been previously recognized as the exclusive representative of employees of the municipal court and the superior court, the county and the unified superior court shall continue to recognize each exclusive representative of each bargaining unit and shall continue to be bound by any existing memorandum of understanding or agreement covering those employees for a period not to exceed 225 days from date of unification, pending the exhaustion of the election procedure set forth in paragraph (2). Any conflicts in the existing agreements as to wages and other terms and conditions of employment shall be subject to negotiation between the county or unified superior court and each of the exclusive representatives.

(2) If after unification it is determined that two or more exclusive representatives seek to represent employees in a single appropriate bargaining unit, the unified superior court shall conduct a representation election in accordance with Sections 2201 to 2210, inclusive, of the California Rules of Court. With respect to this process (A) the unified court shall meet and confer with all incumbent exclusive representatives regarding the establishment of appropriate bargaining units, (B) the county or unified superior court shall maintain a neutral position as to the competing employee organizations in the election, (C) the employee organization shall be certified or recognized as the exclusive bargaining representative upon receiving a majority of the votes cast in the representation election, (D) the election of an exclusive representative shall be conducted no later than 180 days from the effective date of unification or the effective date of this subparagraph, whichever comes later, and (E) the certification or recognition of an exclusive representative shall be complete no later than 45 days from the date of the election.

(g) This section applies to all unified superior courts, and the counties and employee organizations involved, beginning on the date of unification.

70219. On submission by the California Law Revision Commission of its report to the Governor and Legislature pursuant to Resolution Chapter 102 of the Statutes of 1997 recommending statutory changes that may be necessitated by court unification, the Judicial Council and the California Law Revision Commission shall study and make recommendations to the Governor and Legislature on the issues identified in the report as appropriate for future study, including consideration of the experience in counties in which the courts have unified. Each agency shall assume primary or joint responsibility for the studies and recommendations as outlined in the report, and each agency shall consult with the other in the studies and recommendations. This section does not limit any authority of the Judicial Council or the California Law Revision Commission to conduct studies and make recommendations authorized or directed by law.

SEC. 258. The heading of Chapter 6 (commencing with Section 71001) of Title 8 of the Government Code is amended to read:

CHAPTER 6. PROVISIONS RELATING TO MUNICIPAL COURTS

SEC. 259. Section 71002 of the Government Code is amended to read:

71002. The board of supervisors shall provide suitable quarters for the municipal courts, including heating, lighting, and janitorial services, and shall supply them with furniture, books, and supplies necessary for carrying out their duties, including supplies and equipment for the preparation and maintenance of duplicate records

of the court or a division of the court when sessions are held at more than one place.

SEC. 260. Section 71004 of the Government Code is amended to read:

71004. Whenever by law any power is conferred, or duty imposed, upon a clerk of any court superseded by a municipal court, the person discharging the same or similar duties in the municipal court has the same power and duty with respect to the office in the municipal court.

SEC. 261. Section 71010 of the Government Code is amended to read:

71010. (a) A board of supervisors may authorize a management review of a municipal court in that county. The board shall select the agency to perform the review.

(b) At least 30 days before the scheduled beginning of the management review, the board shall notify the presiding judge of the court to be reviewed of the review and of the identity of the reviewing agency selected by the board. The court may object to the board's choice of a reviewing agency within 30 days of this notification.

(c) If the court does object to the board's choice, the board and the court shall, within 30 days of the objection, select a reviewing agency acceptable to both board and court. If the board and court fail to agree on a reviewing agency within the 30 days, the management review shall not take place.

(d) Management reviews conducted pursuant to this section shall not infringe on the judicial duties or the decisions of the court which is the subject of the review. Recommendations resulting from such reviews shall not infringe on the judicial duties or the decisions of the court which is the subject of the review and shall be advisory only. The reviewing agency shall have no power of enforcement.

SEC. 262. Section 71040 of the Government Code is amended to read:

71040. As public convenience requires, the board of supervisors shall divide the county into judicial districts for the purpose of electing judges and other officers of municipal courts, and may change district boundaries and create other districts. No city or city and county shall be divided so as to lie within more than one district.

SEC. 263. Section 71042.5 of the Government Code is amended to read:

71042.5. Notwithstanding any other provision of law, upon consolidation of judicial districts or unification of municipal and superior courts in a county, the territory embraced within the respective prior component judicial districts shall be separate judicial districts for the purpose of publication within a judicial district.

SEC. 264. Section 71045 of the Government Code is amended to read:

71045. Each judicial district shall be named by the board of supervisors of the county in which it is situated, and the municipal court established in the district shall be designated by that name. The board of supervisors shall select a name which as nearly as possible identifies the communities embraced in the district.

SEC. 265. Section 71080 of the Government Code is amended to read:

71080. (a) Upon the establishment of a municipal court, the judges of existing municipal courts in any city, township, or judicial subdivision situated wholly or partly in the district or city and county for which a municipal court is established shall, if eligible, become the judges of the municipal court until the election or appointment and qualification of their successors. The time for election and qualification of their successors shall be that previously fixed for the election and qualification of their successors for the court and office superseded, had such courts not been superseded, but in no event shall that election of successors be held within 10 months of succession to the office of the new court.

(b) If the number of eligible incumbent judges who have not filed a written statement with the county elections official disclaiming their desire to succeed to office exceeds the number of judicial offices provided by law for the municipal court, the incumbents shall not automatically succeed to judicial positions in the municipal court, and the existing courts shall continue to function within the district until the first judge or judges of the municipal court are elected by the qualified electors of the district at the first statewide general election held following the expiration of 90 days and qualify.

In any election for the first judge or judges of that municipal court, only those incumbents may appear on the ballot and be elected, and Article 1 (commencing with Section 8200) of Chapter 2 of Division 8 of the Elections Code shall not apply. If only one incumbent is to be elected, the incumbent receiving the highest number of votes cast shall be declared elected. If two or more incumbents are to be elected, those incumbents equal in number to the number to be elected who receive the highest number of votes for the office shall be declared elected. The incumbents elected shall become the judges of the municipal court until the election or appointment and qualification of their successors. The time for election and qualification of their successors shall be that previously fixed for the election and qualification of their successors for the court and office superseded, had the courts not been superseded, but in no event shall that election of successors be held within 10 months of succession to the office of the new court.

SEC. 266. Section 71080.5 of the Government Code is repealed.

SEC. 267. Section 71080.6 of the Government Code is repealed.

SEC. 268. Section 71080.7 of the Government Code is repealed.

SEC. 269. Section 71083 of the Government Code is amended to read:

71083. Whenever the territory of a judicial district (herein called the annexed district) is annexed to a judicial district theretofore having a municipal court (herein called the annexing district), a judge of a court partly or wholly superseded thereby shall, if eligible, succeed to the first vacant judgeship on such municipal court, whether such vacancy then exists or occurs within two years thereafter through the creation of a new judgeship or otherwise, if any one of the following subdivisions apply:

(a) All of the territory of the annexed district is annexed to the annexing district.

(b) A part of the territory of the annexed district is annexed to the annexing district and in such part more than 10 percent of the residents of the annexed district reside, as determined prior to the annexation.

Whenever part of an annexed district is annexed to an annexing district and because of the application of this subdivision, a judge of the annexed district becomes entitled to succeed to a vacant judgeship as above provided, no subsequent annexation of all or part of the remainder of the annexed district to the same annexing district shall entitle any judge of the annexed district to succeed to a vacant judgeship in the annexing district.

Whenever all of the territory of a judicial district is annexed to two or more judicial districts both or all of which theretofore have a municipal court, a judge of the court wholly superseded thereby shall, if eligible, succeed to the first vacant judgeship on any such municipal court, whether such vacancy then exists or occurs within two years thereafter through the creation of a new judgeship or otherwise.

Whenever the number of judges entitled to succeed as above provided exceeds the number of vacant judgeships on such municipal court, the order of their succession shall be determined as follows: by seniority as a judge within the territory annexed, and, in the case of successive annexations, within the territory annexed at the earlier date; and, in any remaining case, by lot between them.

Any judge entitled to succeed as above provided shall declare an acceptance of the judgeship for which a vacancy exists or occurs within 30 days of the date of annexation if the vacancy exists upon the date of annexation or, if no such vacancy then exists, within 30 days of the occurrence of the vacancy later occurring.

This section, as amended at the 1959 Regular Session of the Legislature, applies to annexations occurring before or after the effective date of the amendment to this section enacted at the 1959 Regular Session of the Legislature.

SEC. 270. Section 71084 of the Government Code is repealed.

SEC. 271. Section 71085 of the Government Code is amended to read:

71085. (a) The clerk, or chief clerical officer by whatever name known, the marshal, or similar official, their deputies and attachés,

and all other officers or employees of each court wholly or partly superseded by a municipal court, shall become the clerk, the marshal, their deputies and attachés, and officers or employees of that municipal court upon its organization, so far as those positions are provided by law. If no provision is made by law for officers and employees of a municipal court, there shall be the officers and employees for that court specified in subdivision (b). They shall receive compensation for their services fixed by the judge, if there are one or more other municipal courts in the county in which the court is established, at a rate comparable to but not greater than that provided by law for comparable officers and employees in any other municipal court in the county. If there is no other municipal court in the county in which the court is established, the officers and employees of the court shall receive the compensation for their services fixed by the judge within the ranges provided below until express provision has been made for officers and employees of the court, except that if any officer or employee was receiving compensation in a superseded justice court greater than the maximum range provided in this section for a comparable position in the municipal court, he or she shall continue to receive that compensation until express provision has been made by law for officers and employees of that municipal court. The interim compensation fixed by the judge shall be effective only until the 61st day after final adjournment of the next succeeding regular session of the Legislature.

(b) There shall be one clerk of the court who shall receive a monthly salary in the following range: six hundred dollars ($600), six hundred fifty dollars ($650), seven hundred dollars ($700).

The clerk may appoint with the approval of the judge as many deputies as may be necessary who shall receive a monthly salary in the following range: three hundred fifty dollars ($350), three hundred seventy-five dollars ($375), four hundred dollars ($400), four hundred twenty-five dollars ($425), four hundred fifty dollars ($450), four hundred seventy-five dollars ($475), five hundred dollars ($500).

There shall be one marshal. His or her monthly salary shall be in the following range: five hundred dollars ($500), five hundred fifty dollars ($550), six hundred dollars ($600).

The marshal may appoint with the approval of the judge as many deputy marshals as may be necessary. The monthly salary of a deputy marshal shall be in the following range: four hundred dollars ($400), four hundred fifty dollars ($450), five hundred dollars ($500), five hundred fifty dollars ($550).

The judge of an existing court who does not succeed to judicial office shall be deemed to be a clerk or chief clerical officer within the meaning of this section.

SEC. 272. Section 71087 of the Government Code is repealed.

SEC. 273. Section 71088 of the Government Code is amended to read:

71088. Any police officer appointed and acting as bailiff in any court superseded by a municipal court shall be deemed to be appointed ex officio a deputy marshal subject to the same conditions under which he or she was first appointed, without prejudice to his or her rights by virtue of employment as police officer.

SEC. 274. Section 71091 of the Government Code is amended to read:

71091. If it appears that two or more clerks, marshals, deputies, and other officers or attachés are equally entitled by virtue of the office held in any superseded court, to any one office in the municipal court, the judge, a majority of the judges, or the judge senior in service when there is an equal division of the judges shall determine which person is entitled to the office in which the conflict exists.

SEC. 275. Section 71091.1 of the Government Code is repealed.

SEC. 276. Section 71092 of the Government Code is amended to read:

71092. So far as practical, upon the organization of the court, the clerks, deputies, and attachés or employees of the superseded court shall be assigned to positions in the municipal court similar in duties and compensation to the positions held in the superseded court.

SEC. 277. Section 71093 of the Government Code is amended to read:

71093. Every person who succeeds to any office or position in the municipal court pursuant to the Municipal and Justice Court Act of 1949, or the provisions of law succeeding that act, is entitled to all of the benefits and privileges, not inconsistent with such act or provisions of law, which attached to such person by virtue of an office or position in any superseded court.

SEC. 278. Section 71094 of the Government Code is amended to read:

71094. Continuous employment in a court superseded by a municipal court, or in a court previously superseded by such superseded court, of the officers and attachés of such superseded court who succeed to positions in a municipal court pursuant to the Municipal and Justice Court Act of 1949, or the provisions of law succeeding that act, shall be considered as prior service within the definition of that term in any retirement or pension system adopted which includes municipal court officers and attachés.

SEC. 279. Section 71095 of the Government Code is amended to read:

71095. All actions pending in, and records of, every municipal court in any city, city and county, township, or judicial subdivision situated wholly within a district for which a municipal court is established shall, upon the supersedure of such existing court, be transferred to and become cases pending in and records of the municipal court. All actions pending in, and records of, an existing

court in any township or judicial subdivision situated partly within one district for which a municipal court is established and partly within another such district shall, upon the supersedure of such existing court, be transferred to and become cases pending in and records of the municipal court of the district in which the action should have been brought had such court been established and organized when the action was brought.

SEC. 280. Section 71096 of the Government Code is repealed.

SEC. 281. Section 71097 of the Government Code is repealed.

SEC. 282. Section 71098 of the Government Code is amended to read:

71098. Any action pending in the superior court upon the establishment and organization in the county of a municipal court which would be within the jurisdiction of the municipal court if commenced after its establishment shall continue in the superior court until final determination.

SEC. 283. Section 71099 of the Government Code is amended to read:

71099. Whenever a municipal court is established in a city and county or in a district containing a city in which there is an officer charged with the duty of prosecuting misdemeanor charges in a court superseded by such municipal court, the officer shall prosecute all such misdemeanor charges in the municipal court with the same rights, duties, and privileges that the officer formerly exercised with respect to such charges in the superseded court, including the prosecution of appeals in criminal cases arising in the municipal court and the defense of all writs arising out of arrests for offenses triable in the municipal court in whatever court or courts they may be appealed to or initiated in.

SEC. 284. Section 71100 of the Government Code is amended to read:

71100. Whenever a municipal court is established in a city and county or in a district containing a city in which there is a probation officer, public defender, parole board, or other officer or board charged with duties relating to misdemeanor charges prosecuted in a court superseded by the municipal court, the boards, officers, and their deputies shall perform the same duties in the municipal court as they performed in the superseded court.

SEC. 285. Section 71140 of the Government Code is amended to read:

71140. The judges of a municipal court shall be residents eligible to vote in the judicial district or city and county in which they are elected or appointed for a period of at least 54 days prior to the date of their election or appointment. This requirement shall not affect the right of any person to automatically succeed to an office or position pursuant to Sections 71080 to 71083, inclusive, and Sections 71085 to 71090, inclusive.

This requirement shall not apply to a judge of a municipal court for the rest of his or her unexpired term and for one successive term of office for which he or she is subsequently reelected when:

(a) The judge has succeeded to office under the provisions of Section 71083 and his or her residence is not in the annexed district.

(b) Part of a municipal court district is annexed to another municipal court district and the judge of the original district lives in the part that is annexed.

SEC. 286. Section 71141 of the Government Code is amended to read:

71141. Judges of the municipal court shall be elected at the general state election next preceding the expiration of the term for which the incumbent has been elected.

SEC. 287. Section 71143 of the Government Code is amended to read:

71143. The provisions of the Elections Code relating to the nomination and election of judicial officers apply to the judges of municipal courts.

SEC. 288. Section 71145 of the Government Code is amended to read:

71145. The term of office of judges of municipal courts is six years from and including the first Monday of January after the January 1st next succeeding their election. Judges shall hold office until their successors are elected and qualify, but the office shall be deemed to be vacant upon the expiration of the fixed term for the purpose of selecting a successor.

SEC. 289. Section 71180.3 of the Government Code is repealed.

SEC. 290. Section 71180.4 of the Government Code is repealed.

SEC. 291. Section 71180.5 of the Government Code is amended to read:

71180.5. Upon the appointment, election, death, removal, or resignation of a judge of a municipal court, the clerk or administrator of that municipal court shall immediately give the Judges' Retirement System or the Judges' Retirement System II written notice thereof.

SEC. 292. Section 71181 of the Government Code is amended to read:

71181. All vacancies in the office of clerk of a municipal court and marshal of a municipal court shall be filled by appointment by the judge, by a majority of the judges, or by the judge senior in service when there is an equal division of the judges. All vacancies in the clerk's office shall be filled by appointment by the clerk.

SEC. 293. Section 71181.1 of the Government Code is repealed.

SEC. 294. Section 71220 of the Government Code is amended to read:

71220. The salaries of the judges, clerks, marshals, and other officers or attachés of each municipal court shall be paid by the

county in which the court is situated out of the salary fund or, if there is none, out of the general fund of the county.

SEC. 295. Section 71221 of the Government Code is amended to read:

71221. Except as otherwise provided in this section, the clerk of each municipal court, or if there is none, the judge of the court, shall certify monthly to the county auditor a list showing the amount of compensation of the judges, clerks, and other officers and attachés of that court, except marshals. The marshal of a municipal court shall certify monthly to the county auditor a list showing the amount of compensation of the marshals of the court.

The clerk of the municipal court in the City and County of San Francisco shall certify to the county auditor a list showing the amount of compensation of the judges, clerks, and other officers and attachés of that court, except marshals, in the same manner and for the same period as for departments and employees of the City and County of San Francisco, and the auditor is authorized to pay that compensation in the same manner and for the same period as for employees of the City and County of San Francisco.

SEC. 296. The heading of Article 7 (commencing with Section 71260) of Chapter 6 of Title 8 of the Government Code is amended to read:

Article 7. Clerk and Marshal

SEC. 297. Section 71264 of the Government Code is amended to read:

71264. Whenever required, marshals shall attend the municipal courts of the district in which they are appointed or elected to act; provided, however, that a marshal shall attend a civil action only if the presiding judge or his or her designee makes a determination that the attendance of the marshal at that action is necessary for reasons of public safety. Within their counties they shall execute, serve, and return all writs, processes, and notices directed or delivered to them by municipal courts or by other competent authority. A marshal of a municipal court who is authorized by law to appoint not more than four deputies, shall not be required to travel outside of his or her district to serve any civil process or notice. With respect to proceedings in the municipal court, the marshal of the court has all the powers and duties imposed by law upon the sheriff with respect to proceedings in the superior court. In a county of the third class, the marshal shall attend all superior courts held within the county, subject to the restrictions of this section or Section 26603.

SEC. 298. Section 71267 of the Government Code is amended to read:

71267. The board of supervisors may establish a revolving fund for the use of the clerk or marshal of any municipal court within the county pursuant to Sections 29320 to 29331, inclusive.

SEC. 299. Section 71280 of the Government Code is amended to read:

71280. With respect to proceedings in the municipal court the clerk of the court has all the powers conferred by law upon the clerk of the superior court with respect to proceedings in the superior court.

SEC. 300. Section 71280.1 of the Government Code is amended to read:

71280.1. The clerk of every municipal court shall keep the minutes and other records of the court, entering at length within the time specified by law, or forthwith if no time is specified, any order, judgment, and decree of the court which is required to be entered and showing the date when each entry is made. Failure to enter the date or failure to enter the order, judgment, or decree within the time specified in this section shall not affect the validity or effectiveness of the entry.

SEC. 301. Section 71280.2 of the Government Code is amended to read:

71280.2. Notwithstanding any provisions of law to the contrary, in those counties where it is required by court order or rule that the clerk of the municipal court place individual civil minute orders in the court's file of actions in chronological order, the clerk shall not be required to keep a minute book but shall be required to keep minutes. Nothing contained in this section shall eliminate the requirement for a judgment book where judgments and decrees are required to be entered.

SEC. 302. Section 71280.3 of the Government Code is amended to read:

71280.3. The clerk of a municipal court shall keep among the records of the court such indexes as will insure ready reference to any action or proceeding filed in the court. There shall be separate indexes of plaintiffs and defendants in civil actions and of defendants in criminal actions and the name of each plaintiff and defendant shall be indexed and there shall appear opposite each name indexed the number of the action or proceeding and the name or names of the adverse litigant or litigants, if any, and the date of filing. This section does not apply to criminal actions filed by notice in lieu of a verified complaint pursuant to Section 40513 of the Vehicle Code.

SEC. 303. Section 71280.4 of the Government Code is amended to read:

71280.4. The clerk of the municipal court shall endorse on each paper filed with the court the day, month, and year it is filed.

SEC. 304. Section 71280.5 of the Government Code is amended to read:

71280.5. On and after July 1, 1997, each clerk of the municipal court or of the superior court in a county in which there is no municipal court shall prospectively certify and submit those court records specified by the Judicial Council which relate to criminal

convictions for entry into a computer system operated by the Department of Justice that can be accessed by authorized agents of any district attorney or other state prosecuting agency. This section shall not be construed to require a court to acquire any new equipment or to implement any new procedures.

SEC. 305. Section 71340 of the Government Code is amended to read:

71340. There may be as many sessions of a municipal court at the same time as there are judges elected, appointed, or assigned to the court. The judgments, orders, and proceedings of any session of a municipal court held by any one or more of the judges sitting in the court shall be equally effectual as though all the judges of the court presided at the session.

SEC. 306. Section 71341 of the Government Code is amended to read:

71341. (a) Sessions of a municipal court may be held at any place or places within the district for which the court is established.

(b) Notwithstanding any other provision of law, the presiding or sole judge of a municipal court may direct that a session of the court be held at any place in the county where any superior or municipal court regularly conducts sessions, if each of the following applies:

(1) The judge presiding at the court session is a judge of a municipal court or a retired judge assigned to serve as a municipal court judge under Section 6 of Article VI of the California Constitution.

(2) The presiding or sole judge of the superior or municipal court has informed the presiding judge of the municipal court that the court session will not interfere with the normal conduct of court business.

(3) The session is held in furtherance of a coordination plan approved under Section 68112.

Any type of proceeding may be heard in these sessions.

SEC. 307. The heading of Article 10 (commencing with Section 71380) of Chapter 6 of Title 8 of the Government Code is amended to read:

Article 10. Uniform Accounting System for Courts

SEC. 308. Section 71380 of the Government Code is amended to read:

71380. The Controller shall establish, supervise, and as necessary revise a uniform accounting system, including a system of audit, to the end that all fines, penalties, forfeitures, and fees assessed by courts, and their collection and appropriate disbursement, shall be properly and uniformly accounted for. The accounting system shall apply to superior and municipal courts, together with probation offices, central collection bureaus and any other agencies having a role in this process.

SEC. 309. Section 71381 of the Government Code is amended to read:

71381. Such system may provide for bank accounts for each municipal court, in which money received by such court may be deposited and disbursed as provided therein, and for such records, reports, and procedures as the Controller may deem necessary to carry out the purposes of this article.

SEC. 310. Section 71382 of the Government Code is amended to read:

71382. Every judge of a superior or municipal court, or the clerk of any such court, who willfully fails to keep accounts pursuant to the system or to account for the money paid into and disbursed by the court pursuant to the system established by the Controller pursuant to this article is guilty of a misdemeanor.

SEC. 311. Section 71384 of the Government Code is amended to read:

71384. The system established pursuant to this article may provide for the deposit of all money collected by municipal courts in the county treasury, for disbursement from it, and for the audit of such accounts by the county auditor.

SEC. 312. Section 71386 of the Government Code is amended to read:

71386. (a) Each superior and municipal court shall adopt a written policy, consistent with rules adopted by the Judicial Council, governing the acceptance of checks and money orders in payment of any fees, fines, or bail deposits. Such policy shall permit clerks to accept checks and money orders under conditions which tend to assure their validity.

(b) A court shall accept a personal check, bank cashier's check, or money order for payment of any fee or fine, or for a deposit of bail for any offense which is not declared to be a felony, provided such check or money order meets the criteria established in subdivision (a). However, no court shall be required to accept a check in excess of three hundred dollars ($300) from a defendant in custody as a deposit of bail for any alleged violation of the Penal Code.

(c) The acceptance of a check pursuant to this section constitutes payment of the obligation owed to the payee public agency to the extent of the amount of the check as of the date of acceptance when, but not before, the check is duly paid.

(d) If any check offered in payment pursuant to this section is returned to the payee without payment, a reasonable charge for the returned check not to exceed the actual costs incurred by the court may be imposed to recover the court's processing and collection costs. This charge may be added to, and become part of, any underlying obligation other than an obligation which constitutes a lien on real property, or a different method of payment for that payment and future payments by such person may be prescribed. The charges imposed by a court for a returned check shall be retained

by the treasurer of the county and be deposited in the county general fund.

SEC. 313. Chapter 7 (commencing with Section 71600) of Title 8 of the Government Code is repealed.

SEC. 314. The heading of Chapter 8 (commencing with Section 72000) of Title 8 of the Government Code is amended to read:

CHAPTER 8. MUNICIPAL AND SUPERIOR COURTS

SEC. 315. Section 72055 of the Government Code is amended to read:

72055. The total fee for filing of the first paper in a limited civil case, shall be ninety dollars ($90), except that in cases where the amount demanded, excluding attorney's fees and costs, is ten thousand dollars ($10,000) or less, the fee shall be eighty-three dollars ($83). The amount of the demand shall be stated on the first page of the paper immediately below the caption.

This section applies to the initial complaint, petition, or application, and any papers transmitted from another court on the transfer of a civil action or proceeding, but does not include documents filed pursuant to Section 491.150, 704.750, or 708.160 of the Code of Civil Procedure.

The term "total fee" as used in this section and Section 72056 includes any amount allocated to the Judges' Retirement Fund pursuant to Section 72056.1, any automation fee imposed pursuant to Section 68090.7, any construction fee imposed pursuant to Section 76238, and the law library fee established pursuant to Article 2 (commencing with Section 6320) of Chapter 5 of Division 3 of the Business and Professions Code. The term "total fee" as used in Section 72056 includes any dispute resolution fee imposed pursuant to Section 470.3 of the Business and Professions Code. The term "total fee" as used in this section also includes any dispute resolution fee imposed pursuant to Section 470.3 of the Business and Professions Code, but the board of supervisors of each county may exclude any portion of this dispute resolution fee from the term "total fee."

The fee shall be waived in any action for damages against a defendant, based upon the defendant's commission of a felony offense, upon presentation to the clerk of the court of a certified copy of the abstract of judgment of conviction of the defendant of the felony giving rise to the claim for damages. If the plaintiff would have been entitled to recover those fees from the defendant had they been paid, the court may assess the amount of the waived fees against the defendant and order the defendant to pay that sum to the county.

SEC. 315.5. Section 72055 of the Government Code is amended to read:

72055. The total fee for filing of the first paper in a limited civil case, on behalf of any plaintiff or petitioner, or any plaintiffs or petitioners filing jointly, shall be ninety dollars ($90), except that in

cases where the amount demanded, excluding attorney's fees and costs, is ten thousand dollars ($10,000) or less, the fee shall be eighty-three dollars ($83). The amount of the demand shall be stated on the first page of the paper immediately below the caption.

This section applies to the initial complaint, petition, or application, and any papers transmitted from another court on the transfer of a civil action or proceeding, but does not include documents filed pursuant to Section 491.150, 704.750, or 708.160 of the Code of Civil Procedure.

The term "total fee" as used in this section and Section 72056 includes any amount allocated to the Judges' Retirement Fund pursuant to Section 72056.1, any automation fee imposed pursuant to Section 68090.7, any construction fee imposed pursuant to Section 76238, and the law library fee established pursuant to Article 2 (commencing with Section 6320) of Chapter 5 of Division 3 of the Business and Professions Code. The term "total fee" as used in Section 72056 includes any dispute resolution fee imposed pursuant to Section 470.3 of the Business and Professions Code. The term "total fee" as used in this section also includes any dispute resolution fee imposed pursuant to Section 470.3 of the Business and Professions Code, but the board of supervisors of each county may exclude any portion of this dispute resolution fee from the term "total fee."

The fee shall be waived in any action for damages against a defendant, based upon the defendant's commission of a felony offense, upon presentation to the clerk of the court of a certified copy of the abstract of judgment of conviction of the defendant of the felony giving rise to the claim for damages. If the plaintiff would have been entitled to recover those fees from the defendant had they been paid, the court may assess the amount of the waived fees against the defendant and order the defendant to pay that sum to the county.

SEC. 316. Section 72056 of the Government Code is amended to read:

72056. The total fee for filing of the first paper in a limited civil case on behalf of any party other than a plaintiff shall be eighty dollars ($80).

SEC. 316.5. Section 72056 of the Government Code is amended to read:

72056. The total fee for filing of the first paper in a limited civil case on behalf of any party other than a plaintiff, or several of them filing jointly, shall be eighty dollars ($80).

SEC. 317. Section 72056.01 of the Government Code is amended to read:

72056.01. (a) The fee for filing an amended complaint or amendment to a complaint in a limited civil case is forty-five dollars ($45).

(b) The fee for filing a cross-complaint, amended cross-complaint or amendment to a cross-complaint in a limited civil case is forty-five dollars ($45).

(c) A party shall not be required to pay the fee provided by this section for an amended complaint, amendment to a complaint, amended cross-complaint or amendment to a cross-complaint more than one time in any action.

(d) The fee provided by this section shall not apply to either of the following:

(1) An amended pleading or amendment to a pleading ordered by the court to be filed.

(2) An amended pleading or amendment to a pleading that only names previously fictitiously named defendants.

SEC. 318. Section 72056.1 of the Government Code is amended to read:

72056.1. A fee of two dollars ($2) for the Judges' Retirement Fund shall be included within the total fees collected pursuant to Sections 72055 and 72056 in each limited civil case.

The funds shall be transmitted at the end of each month to the Controller for payment into the Judges' Retirement Fund.

SEC. 319. Section 72060 of the Government Code is amended to read:

72060. The fee for a certificate and transmitting transcript and papers on appeal in a limited civil case is ten dollars ($10). Notwithstanding Section 68085, six dollars ($6) of the fee authorized in this section shall be deposited in the county general fund for use as county general fund revenue.

SEC. 320. Section 72190 of the Government Code is amended to read:

72190. Within the jurisdiction of the court and under the direction of the judges, commissioners of municipal courts shall exercise all the powers and perform all of the duties authorized by law to be performed by commissioners of superior courts and such additional powers and duties as may be prescribed by law. At the direction of the judges, commissioners may have the same jurisdiction and exercise the same powers and duties as the judges of the court with respect to any infraction or small claims action. The commissioners of municipal courts shall possess the same qualifications the law requires of a judge and shall hold office during the pleasure of the court appointing them and shall not engage in the private practice of law. They shall be ex officio deputy clerks.

Notwithstanding any other provision of law, a commissioner of a municipal court or a justice court of any judicial district in this state who has been duly appointed and has thereafter been retired for service, or a commissioner of a superior court in this state who has been duly appointed and has thereafter been retired from service, may be assigned by the presiding judge or sole judge of a municipal court to serve as a court commissioner of the court for any periods of time as he or she is needed for the prompt and efficient discharge of the business of that court. While serving, he or she shall be paid the full compensation of a court commissioner, payable as follows: he or

she shall continue to receive his or her retirement allowance, and in addition the county shall pay him or her the amount equal to the difference between the retirement allowance and full compensation. That employment shall not operate to reinstate him or her as a member of the county retirement system or to terminate or suspend his or her retirement rights or allowance, and no deductions shall be made from his or her compensation as contributions to the retirement system.

SEC. 321. Section 72190.1 of the Government Code is amended to read:

72190.1. A commissioner of a municipal court may conduct arraignment proceedings in the court if directed to perform those duties by the presiding or sole judge of the court, including the issuance and signing of bench warrants.

SEC. 322. Section 72190.2 of the Government Code is amended to read:

72190.2. If directed to perform such duties by the presiding judge or sole judge of the court, a commissioner of the municipal court may issue and sign a bench warrant for the arrest of a defendant who fails to appear in court when required to appear by law or who fails to perform any act required by court order.

SEC. 323. Section 72193 of the Government Code is amended to read:

72193. Whenever the charter of any city creates the office of city prosecutor, or provides that a deputy city attorney shall act as city prosecutor, and charges such prosecutor with the duty, when authorized by law, of prosecuting misdemeanor offenses arising out of violations of state laws, the city prosecutor may exercise the following powers:

(a) The city prosecutor shall prosecute all such misdemeanors committed within the city, and handle all appeals arising from it. The city prosecutor shall draw complaints for such misdemeanors, and shall prosecute all recognizances or bail bond forfeitures arising from or resulting from the commission of such offenses.

(b) Whenever any person applying for a writ of habeas corpus is held in custody by any peace officer of such city, charged with having committed within the city any misdemeanor, a copy of the application for such writ shall be served upon such city prosecutor at the time and in the manner provided by law for the service of writs of habeas corpus upon district attorneys. On behalf of the people, the prosecutor shall conduct all proceedings relating to such application. If the constitutionality of any law is questioned in any such habeas corpus proceeding, the city prosecutor shall immediately notify the city attorney who may take charge of the proceedings on behalf of the people, or become associated with the city prosecutor in the proceedings.

SEC. 324. Section 72194.5 of the Government Code is amended to read:

72194.5. Whenever an official court reporter or a temporary court reporter is unavailable to report an action or proceeding in a court, subject to the availability of approved equipment and equipment monitors, the court may order that, in a limited civil case, or a misdemeanor or infraction case, the action or proceeding be electronically recorded, including all the testimony, the objections made, the ruling of the court, the exceptions taken, all arraignments, pleas, and sentences of defendants in criminal cases, the arguments of the attorneys to the jury, and all statements and remarks made and oral instructions given by the judge. The court shall assign available reporters first to report preliminary hearings and then to other proceedings. A transcript derived from an electronic recording may be utilized whenever a transcript of court proceedings is required. The electronic recording device and appurtenant equipment shall be of a type approved by the Judicial Council for courtroom use.

SEC. 325. Section 72196 of the Government Code is amended to read:

72196. Whenever the business of the court requires, the presiding or sole judge of the municipal court may request the services of one or more official reporters of the superior court within the same county to act as pro tempore phonographic reporter of the municipal court in criminal cases. Any such request shall be addressed to the presiding judge of the superior court. Such request shall be granted or denied in the manner and subject to the provisions set forth in Article 9 (commencing with Section 69941) of Chapter 5 of Title 8 of this code.

SEC. 326. Section 72197 of the Government Code is amended to read:

72197. Whenever such request has been granted and any official reporter of the superior court has been assigned to act as a pro tempore phonographic reporter of the municipal court, such reporter shall, during the period of such assignment to the municipal court, perform the duties of an official reporter of such municipal court and during the time of any such assignment such reporter shall be subject to the provisions of Sections 69942 to 69955, inclusive, and Sections 273 and 274c of the Code of Civil Procedure.

SEC. 327. Section 72198 of the Government Code is amended to read:

72198. In any county in which the official reporter of the superior court receives an annual salary fixed by law no additional compensation shall be paid to such reporter for any service rendered by the reporter while assigned to the municipal court; provided, however, that any official reporter of the superior court assigned to a municipal court situated at a place other than the situs of the superior court in which said reporter regularly serves shall receive mileage from said superior court to the municipal court to which the reporter has been assigned, and return, for each day, or fraction thereof, during which said superior court reporter serves in the

municipal court; the rate for mileage so allowed shall be that fixed and paid to county employees generally.

SEC. 328. Section 72301 of the Government Code is amended to read:

72301. The clerk of the municipal court or superior court in a county in which there is no municipal court or one or more deputy clerks, the sheriff or one or more deputy sheriffs, or one or more city police officers shall be in attendance at all hours of the day and night, including Sundays and holidays, and may fix and accept bail pursuant to procedures established by the court for the appearance before the court of any defendant charged in the court with an offense of which the court has jurisdiction or whenever a defendant has been arrested and booked within the territorial limits of said judicial district for having committed a misdemeanor. The amount of bail shall be pursuant to a schedule of bail in such cases previously fixed and approved by the judges of the court at their annual meeting. If a warrant has been issued for the arrest of the defendant, the bail shall be in the amount fixed in the warrant. The bail shall be cash, negotiable United States Treasury bonds, or a surety bond executed by a certified, admitted surety insurer as provided in the Insurance Code.

SEC. 329. Section 72302 of the Government Code is amended to read:

72302. If a defendant has been arrested for felony upon a warrant issued by a judge of that court, the clerk may, under like conditions, accept bail in the amount fixed in the warrant.

SEC. 330. Section 72604 of the Government Code is amended to read:

72604. Notwithstanding Article 9 (commencing with Section 69941) of Chapter 5, or any other provision of law in conflict with this section, in each municipal court district in counties having a population of 2,000,000 inhabitants, or over, as determined by the 1970 federal census, except in municipal court districts where a statute provides otherwise, the official reporter and official reporters pro tempore in those districts governed by this section shall receive for their services the same per diem fee paid to official court reporters pro tempore of the Superior Court of Los Angeles County. All other fees of these reporters for transcription shall be as provided in Article 9 (commencing with Section 69941) of Chapter 5.

SEC. 331. Section 72785 of the Government Code is repealed.

SEC. 332. Section 75101 of the Government Code is amended to read:

75101. The Controller shall at the end of each month ascertain the aggregate amount of the annual salaries of all positions established by law as justices of the Supreme Court and of the courts of appeal and judges of the superior and municipal courts, and out of the General Fund he or she shall transfer monthly into the Judges' Retirement

Fund a sum equal to 8 percent of one-twelfth of the aggregate amount of those salaries.

SEC. 333. Section 75103 of the Government Code is amended to read:

75103. Except as provided in Section 75103.3, the auditor of each county shall deduct 8 percent from the portion paid by a county of the monthly salary of each judge of the superior and municipal court and cause this amount to be paid into the Judges' Retirement Fund.

SEC. 334. Section 75602 of the Government Code is amended to read:

75602. Except as provided in Section 75605, the Controller or the auditor of each county shall deduct 8 percent from the portion paid by a county, or the Controller and the auditor, if appropriate, of the monthly salary of each judge of the superior and municipal court and cause this amount to be paid into the Judges' Retirement System II Fund.

SEC. 335. Section 77003 of the Government Code is amended to read:

77003. (a) As used in this chapter, "court operations" means all of the following:

(1) Salaries, benefits, and public agency retirement contributions for superior and municipal court judges and for subordinate judicial officers. For purposes of this paragraph, "subordinate judicial officers" includes all commissioner or referee positions created prior to July 1, 1997, including positions created in the municipal court prior to July 1, 1997, which thereafter became positions in the superior court as a result of unification of the municipal and superior courts in a county, and including those commissioner positions created pursuant to Sections 69904, 70141, 70141.9, 70142.11, 72607, 73794, 74841.5, and 74908; and includes any staff who provide direct support to commissioners; but does not include commissioners or staff who provide direct support to the commissioners whose positions were created after July 1, 1997, unless approved by the Judicial Council, subject to availability of funding.

(2) The salary, benefits, and public agency retirement contributions for other court staff including all municipal court staff positions specifically prescribed by statute.

(3) Those marshals and sheriffs as the court deems necessary for court operations.

(4) Court-appointed counsel in juvenile court dependency proceedings and counsel appointed by the court to represent a minor pursuant to Chapter 10 (commencing with Section 3150) of Part 2 of Division 8 of the Family Code.

(5) Services and supplies relating to court operations.

(6) Collective bargaining under the Meyers-Milias-Brown Act or Sections 2201 to 2210, inclusive, of the California Rules of Court with respect to court employees specified in Section 3501.5.

(7) Actual indirect costs for county and city and county general services attributable to court operations, but specifically excluding, but not limited to, law library operations conducted by a trust pursuant to statute; courthouse construction; district attorney services; probation services; indigent criminal defense; grand jury expenses and operations; and pretrial release services.

(b) However, "court operations" does not include collection enhancements as defined in Rule 810 of the California Rules of Court as it read on July 1, 1996.

SEC. 336. Section 77007 of the Government Code is amended to read:

77007. As used in this chapter, "trial court" means a superior or municipal court.

SEC. 337. Section 664 of the Harbors and Navigation Code is amended to read:

664. (a) When any person is arrested for a violation of this chapter or any regulation adopted by the department pursuant to this chapter or any ordinance or local law relating to the operation and equipment of vessels, and such person is not immediately taken before a magistrate, the arresting officer shall prepare in duplicate a written notice to appear in court, containing the name and address of such person, the offense charged, and the time and place where and when such person shall appear in court.

(b) The time specified in the notice to appear must be at least five days after such arrest.

(c) The place specified in the notice to appear shall be either:

1. Before a municipal court judge, or superior court judge in a county in which there is no municipal court, within the county in which the offense charged is alleged to have been committed and who has jurisdiction of the offense and who is nearest and most accessible with reference to the place where the arrest is made; or

2. Upon demand of the person arrested, before a municipal court judge, or superior court judge in a county in which there is no municipal court, having jurisdiction of such offense at the county seat of the county in which such offense is alleged to have been committed; or before a judge in the judicial district in which the offense is alleged to have been committed.

3. Before an officer authorized by the county, city, or city and county, to receive a deposit of bail.

4. Before a municipal court judge, or superior court judge in a county in which there is no municipal court, within 50 miles by the nearest road to the place of the alleged offense who has jurisdiction of the offense and whose judicial district contains any portion of the body of water upon which the offense charged is alleged to have been committed.

(d) The officer shall deliver one copy of the notice to appear to the arrested person and the arrested person in order to secure release must give a written promise so to appear in court by signing the

duplicate notice which shall be retained by the officer. Thereupon the arresting officer shall forthwith release the person arrested from custody.

(e) The officer shall, as soon as practicable, file the duplicate notice with the magistrate specified therein. Thereupon the magistrate shall fix the amount of bail which in the magistrate's judgment, in accordance with the provisions of Section 1275 of the Penal Code, will be reasonable and sufficient for the appearance of the defendant and shall indorse upon the notice a statement signed by the defendant in the form set forth in Section 815a of the Penal Code. The defendant may, prior to the date upon which the defendant promised to appear in court, deposit with the magistrate the amount of bail thus set. Thereafter, at the time when the case is called for arraignment before the magistrate, if the defendant shall not appear, either in person or by counsel, the magistrate may declare the bail forfeited, and may in the magistrate's discretion order that no further proceedings shall be had in such case.

Upon the making of such order that no further proceedings be had, all sums deposited as bail shall forthwith be paid into the county treasury for distribution pursuant to Section 1463 of the Penal Code.

(f) No warrant shall issue on such charge for the arrest of a person who has given such written promise to appear in court, unless and until the person has violated such promise or has failed to deposit bail, to appear for arraignment, trial or judgment, or to comply with the terms and provisions of the judgment, as required by law.

SEC. 338. Section 667 of the Harbors and Navigation Code is amended to read:

667. In addition to any other court which may be a proper place of trial, any municipal court within 50 miles by the nearest road to the place of the alleged offense having jurisdiction of the offense, or the superior court in a county in which there is no municipal court, shall be a proper place of trial of any person on a charge of violation of this chapter or any regulation adopted by the department pursuant to this chapter or any ordinance or local law relating to the operation and equipment of vessels if the judicial district includes any portion of the body of water upon which the offense charged is alleged to have been committed.

SEC. 339. Section 108580 of the Health and Safety Code is amended to read:

108580. When a toy is alleged to be in violation of this article, the department or the local health officer shall commence proceedings in the superior court, or municipal court in whose jurisdiction the toy is located, for condemnation of the article.

SEC. 340. Section 111880 of the Health and Safety Code is amended to read:

111880. When a food, drug, device, or cosmetic is alleged to be adulterated, misbranded, falsely advertised, or the sale of which is otherwise in violation of this part, the department shall commence

proceedings in the superior court or municipal court in whose jurisdiction the food, drug, device, or cosmetic is located, for condemnation of the article.

SEC. 341. Section 111895 of the Health and Safety Code is amended to read:

111895. Any superior or municipal court of this state may condemn any food, drug, device, or cosmetic under provisions of this part. In the absence of such an order, the food, drug, device, or cosmetic may be destroyed under the supervision of an authorized agent of the department who has the written consent of the owner, his or her attorney, or authorized representative.

SEC. 342. Section 117070 of the Health and Safety Code is amended to read:

117070. Any violation of any such rule or regulation lawfully made by the public agency is a misdemeanor. Any judge of a municipal court within any judicial district within which the reservoir lies in whole or in part, or any superior court in a county in which there is no municipal court, shall have jurisdiction of all prosecutions for violations of any rules and regulations adopted by the public agency.

SEC. 343. Section 117120 of the Health and Safety Code is amended to read:

117120. Any violation of any rule or regulation lawfully made by the governmental agency is a misdemeanor. Any judge of a municipal court within any judicial district within which the reservoir lies in whole or in part, or any superior court in a county in which there is no municipal court, shall have jurisdiction of all prosecutions for violations of any such rules and regulations adopted by the governmental agency.

SEC. 344. Section 12961 of the Insurance Code is amended to read:

12961. (a) The commissioner shall provide the Legislature with an annual report analyzing the following types of actions:

(1) Medical malpractice actions.

(2) Toxic substance tort actions.

(3) Product and design liability actions.

(4) Tort actions in which a public entity is a defendant.

(5) Tort actions involving judgments or settlements of one million dollars ($1,000,000) or more.

(6) Class action tort actions.

(7) Defamation and invasion of privacy actions.

(8) Other categories of tort actions involving commercial liability claims as the commissioner deems necessary.

(b) The study may exclude actions in which the only defendant is an individual sued in his or her private capacity. The study may exclude limited civil cases.

(c) If any of the information required to be provided by the parties is confidential under any other provision of law or pursuant to any court order, the commissioner shall keep that information

confidential and shall limit its analysis of that information to aggregate data or other analyses which will not reveal the identity of the parties.

SEC. 345. Section 98 of the Labor Code is amended to read:

98. (a) The Labor Commissioner shall have the authority to investigate employee complaints. The Labor Commissioner may provide for a hearing in any action to recover wages, penalties, and other demands for compensation properly before the division or the Labor Commissioner including orders of the Industrial Welfare Commission, and shall determine all matters arising under his or her jurisdiction. It shall be within the jurisdiction of the Labor Commissioner to accept and determine claims from holders of payroll checks or payroll drafts returned unpaid because of insufficient funds, if, after a diligent search, the holder is unable to return the dishonored check or draft to the payee and recover the sums paid out. Within 30 days of filing of the complaint, the Labor Commissioner shall notify the parties as to whether a hearing will be held, or whether action will be taken in accordance with Section 98.3, or whether no further action will be taken on the complaint. If the determination is made by the Labor Commissioner to hold a hearing, the hearing shall be held within 90 days of the date of that determination. However, the Labor Commissioner may postpone or grant additional time before setting a hearing if the Labor Commissioner finds that it would lead to an equitable and just resolution of the dispute.

It is the intent of the Legislature that hearings held pursuant to this section be conducted in an informal setting preserving the right of the parties.

(b) When a hearing is set, a copy of the complaint, which shall include the amount of compensation requested, together with a notice of time and place of the hearing, shall be served on all parties, personally or by certified mail.

(c) Within 10 days after service of the notice and the complaint, a defendant may file an answer with the Labor Commissioner in any form as the Labor Commissioner may prescribe, setting forth the particulars in which the complaint is inaccurate or incomplete and the facts upon which the defendant intends to rely.

(d) No pleading other than the complaint and answer of the defendant or defendants shall be required. Both shall be in writing and shall conform to the form and the rules of practice and procedure adopted by the Labor Commissioner.

(e) Evidence on matters not pleaded in the answer shall be allowed only on terms and conditions the Labor Commissioner shall impose. In all these cases, the claimant shall be entitled to a continuance for purposes of review of the new evidence.

(f) If the defendant fails to appear or answer within the time allowed under this chapter, no default shall be taken against him or her, but the Labor Commissioner shall hear the evidence offered and

shall issue an order, decision, or award in accordance with the evidence. A defendant failing to appear or answer, or subsequently contending to be aggrieved in any manner by want of notice of the pendency of the proceedings, may apply to the Labor Commissioner for relief in accordance with Section 473 of the Code of Civil Procedure. The Labor Commissioner may afford this relief. No right to relief, including the claim that the findings or award of the Labor Commissioner or judgment entered thereon are void upon their face, shall accrue to the defendant in any court unless prior application is made to the Labor Commissioner in accordance with this chapter.

(g) All hearings conducted pursuant to this chapter are governed by the division and by the rules of practice and procedure adopted by the Labor Commissioner.

(h) Whenever a claim is filed under this chapter against a person operating or doing business under a fictitious business name, as defined in Section 17900 of the Business and Professions Code, which relates to the person's business, the division shall inquire at the time of the hearing whether the name of the person is the legal name under which the business or person has been licensed, registered, incorporated, or otherwise authorized to do business.

The division may amend an order, decision, or award to conform to the legal name of the business or the person who is the defendant to a wage claim, provided it can be shown that proper service was made on the defendant or his or her agent, unless a judgment had been entered on the order, decision, or award pursuant to subdivision (d) of Section 98.2. The Labor Commissioner may apply to the clerk of the municipal or superior court to amend a judgment that has been issued pursuant to a final order, decision, or award to conform to the legal name of the defendant, provided it can be shown that proper service was made on the defendant or his or her agent.

SEC. 346. Section 98.2 of the Labor Code is amended to read:

98.2. (a) Within 10 days after service of notice of an order, decision, or award the parties may seek review by filing an appeal to the municipal or superior court, in accordance with the appropriate rules of jurisdiction, where the appeal shall be heard de novo. A copy of the appeal request shall be served upon the Labor Commissioner by the appellant. For purposes of computing the 10-day period after service, Section 1013 of the Code of Civil Procedure shall be applicable.

(b) If the party seeking review by filing an appeal to the municipal or superior court is unsuccessful in the appeal, the court shall determine the costs and reasonable attorneys' fees incurred by the other parties to the appeal, and assess that amount as a cost upon the party filing the appeal.

(c) If no notice of appeal of the order, decision, or award is filed within the period set forth in subdivision (a), the order, decision, or award shall, in the absence of fraud, be deemed the final order.

(d) The Labor Commissioner shall file, within 10 days of the order becoming final pursuant to subdivision (c), a certified copy of the final order with the clerk of the municipal or superior court, in accordance with the appropriate rules of jurisdiction, of the appropriate county unless a settlement has been reached by the parties and approved by the Labor Commissioner. Judgment shall be entered immediately by the court clerk in conformity therewith. The judgment so entered shall have the same force and effect as, and shall be subject to all of the provisions of law relating to, a judgment in a civil action, and may be enforced in the same manner as any other judgment of the court in which it is entered. Enforcement of the judgment shall receive court priority.

(e) In order to ensure judgments are satisfied, the Labor Commissioner may serve upon the judgment debtor personally or by first-class mail at the last known address of the judgment debtor listed with the division, a form similar to, and requiring the reporting of the same information as, the form approved or adopted by the Judicial Council for purposes of subdivision (b) of Section 117.19 of the Code of Civil Procedure to assist in identifying the nature and location of any assets of the judgment debtor.

The judgment debtor shall complete the form and cause it to be delivered to the division at the address listed on the form within 35 days after the form has been served on the judgment debtor, unless the judgment has been satisfied. In case of willful failure by the judgment debtor to comply with this subdivision, the division or the judgment creditor may request the court to apply the sanctions provided in Section 708.170 of the Code of Civil Procedure.

(f) Notwithstanding subdivision (d), the Labor Commissioner may stay execution of any judgment entered upon an order, decision, or award which has become final upon good cause appearing therefore and may impose the terms and conditions of the stay of execution. A certified copy of the stay of execution shall be filed with the clerk entering the judgment.

(g) When a judgment is satisfied in fact, otherwise than by execution, the Labor Commissioner may, upon the motion of either party or on its own motion, order entry of satisfaction of judgment. The clerk of the court shall enter a satisfaction of judgment upon the filing of a certified copy of the order.

(h) The Labor Commissioner shall make every reasonable effort to ensure that judgments are satisfied, including taking all appropriate legal action and requiring the employer to deposit a bond as provided in Section 240.

(i) The judgment creditor, or the Labor Commissioner as assignee of the judgment creditor, shall be entitled to court costs and reasonable attorney fees for enforcing the judgment which is rendered pursuant to this section.

SEC. 347. Section 3352 of the Labor Code is amended to read:

3352. "Employee" excludes the following:

(a) Any person defined in subdivision (d) of Section 3351 who is employed by his or her parent, spouse, or child.

(b) Any person performing services in return for aid or sustenance only, received from any religious, charitable, or relief organization.

(c) Any person holding an appointment as deputy clerk or deputy sheriff appointed for his or her own convenience, and who receives no compensation from the county or municipal corporation or from the citizens thereof for his or her services as the deputy. This exclusion is operative only as to employment by the county or municipal corporation and does not deprive any person so deputized from recourse against a private person employing him or her for injury occurring in the course of and arising out of the employment.

(d) Any person performing voluntary services at or for a recreational camp, hut, or lodge operated by a nonprofit organization, exempt from federal income tax under Section 101(6) of the Internal Revenue Code, of which he or she or a member of his or her family is a member and who receives no compensation for those services other than meals, lodging, or transportation.

(e) Any person performing voluntary service as a ski patrolman who receives no compensation for those services other than meals or lodging or the use of ski tow or ski lift facilities.

(f) Any person employed by a ski lift operator to work at a snow ski area who is relieved of and not performing any prescribed duties, while participating in recreational activities on his or her own initiative.

(g) Any person, other than a regular employee, participating in sports or athletics who receives no compensation for the participation other than the use of athletic equipment, uniforms, transportation, travel, meals, lodgings, or other expenses incidental thereto.

(h) Any person defined in subdivision (d) of Section 3351 who was employed by the employer to be held liable for less than 52 hours during the 90 calendar days immediately preceding the date of the injury for injuries, as defined in Section 5411, or during the 90 calendar days immediately preceding the date of the last employment in an occupation exposing the employee to the hazards of the disease or injury for injuries, as defined in Section 5412, or who earned less than one hundred dollars ($100) in wages from the employer during the 90 calendar days immediately preceding the date of the injury for injuries, as defined in Section 5411, or during the 90 calendar days immediately preceding the date of the last employment in an occupation exposing the employee to the hazards of the disease or injury for injuries, as defined in Section 5412.

(i) Any person performing voluntary service for a public agency or a private, nonprofit organization who receives no remuneration for the services other than meals, transportation, lodging, or reimbursement for incidental expenses.

(j) Any person, other than a regular employee, performing officiating services relating to amateur sporting events sponsored by any public agency or private, nonprofit organization, who receives no remuneration for these services other than a stipend for each day of service no greater than the amount established by the Department of Personnel Administration as a per diem expense for employees or officers of the state. The stipend shall be presumed to cover incidental expenses involved in officiating, including, but not limited to, meals, transportation, lodging, rule books and courses, uniforms, and appropriate equipment.

(k) Any student participating as an athlete in amateur sporting events sponsored by any public agency, public or private nonprofit college, university or school, who receives no remuneration for the participation other than the use of athletic equipment, uniforms, transportation, travel, meals, lodgings, scholarships, grants-in-aid, or other expenses incidental thereto.

(*l*) Any law enforcement officer who is regularly employed by a local or state law enforcement agency in an adjoining state and who is deputized to work under the supervision of a California peace officer pursuant to paragraph (4) of subdivision (a) of Section 832.6 of the Penal Code.

(m) Any law enforcement officer who is regularly employed by the Oregon State Police, the Nevada Department of Motor Vehicles and Public Safety, or the Arizona Department of Public Safety and who is acting as a peace officer in this state pursuant to subdivision (a) of Section 830.32 of the Penal Code.

(n) Any person, other than a regular employee, performing services as a sports official for an entity sponsoring an intercollegiate or interscholastic sports event, or any person performing services as a sports official for a public agency, public entity, or a private nonprofit organization, which public agency, public entity, or private nonprofit organization sponsors an amateur sports event. For purposes of this subdivision, "sports official" includes an umpire, referee, judge, scorekeeper, timekeeper, or other person who is a neutral participant in a sports event.

SEC. 348. Section 5710 of the Labor Code is amended to read:

5710. (a) The appeals board, a workers' compensation judge, or any party to the action or proceeding, may, in any investigation or hearing before the appeals board, cause the deposition of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil actions in the superior courts of this state under Article 3 (commencing with Section 2016) of Chapter 3 of Title 4 of Part 4 of the Code of Civil Procedure. To that end the attendance of witnesses and the production of records may be required. Depositions may be taken outside the state before any officer authorized to administer oaths. The appeals board or a workers' compensation judge in any proceeding before the appeals board may cause evidence to be taken in other jurisdictions before

the agency authorized to hear workers' compensation matters in those other jurisdictions.

(b) Where the employer or insurance carrier requests a deposition to be taken of an injured employee, or any person claiming benefits as a dependent of an injured employee, the deponent is entitled to receive in addition to all other benefits:

(1) All reasonable expenses of transportation, meals, and lodging incident to the deposition.

(2) Reimbursement for any loss of wages incurred during attendance at the deposition.

(3) A copy of the transcript of the deposition, without cost.

(4) A reasonable allowance for attorney's fees for the deponent, if represented by an attorney licensed by the State Bar of this state. The fee shall be discretionary with, and, if allowed, shall be set by, the appeals board, but shall be paid by the employer or his or her insurer.

(5) A reasonable allowance for interpreter's fees for the deponent, if interpretation services are needed and provided by a language interpreter certified or deemed certified pursuant to Article 8 (commencing with Section 11435.05) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of, or Section 68566 of, the Government Code. The fee shall be in accordance with the fee schedule set by the administrative director and paid by the employer or his or her insurer. Payment for interpreter's services shall be allowed for deposition of a non-English-speaking injured worker, and for any other deposition-related events as permitted by the administrative director.

SEC. 349. Section 6613 of the Labor Code is amended to read:

6613. The appeals board, a hearing officer, or any party to the action or proceeding, may, in any investigation or hearing before the appeals board, cause the deposition of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil actions in the superior courts of this state under Article 3 (commencing with Section 2016) of Chapter 3 of Title 4 of Part 4 of the Code of Civil Procedure. To that end the attendance of witnesses and the production of records may be required. Depositions may be taken outside the state before any officer authorized to administer oaths. The appeals board or a hearing officer in any proceeding before the appeals board may cause evidence to be taken in other jurisdictions before the agency authorized to hear similar matters in such other jurisdictions.

SEC. 350. Section 467 of the Military and Veterans Code is amended to read:

467. For the purpose of collecting fines or penalties imposed by a court-martial, the president of any general or special court-martial and the summary court officer of any summary court shall make a list of all fines and penalties and of the persons against whom they have been imposed, and may thereafter issue a warrant under his or her hand directed to any sheriff or marshal of the county, commanding

him or her to levy and collect the fines and penalties, together with the costs, upon and out of the property of the person against whom the fine or penalty is imposed. The warrant shall be executed and renewed in the same manner as executions under the Code of Civil Procedure.

All fines collected under this section or imposed and collected under Section 450.1 shall be paid by the officer collecting them to the commanding officer of the organization of which the person fined is or was a member and shall be deposited by the commanding officer into the General Fund.

SEC. 351. Section 97 of the Penal Code is repealed.

SEC. 352. Section 190.9 of the Penal Code is amended to read:

190.9. (a) (1) In any case in which a death sentence may be imposed, all proceedings conducted in the municipal and superior courts, including all conferences and proceedings, whether in open court, in conference in the courtroom, or in chambers, shall be conducted on the record with a court reporter present. The court reporter shall prepare and certify a daily transcript of all proceedings commencing with the preliminary hearing. Proceedings prior to the preliminary hearing shall be reported but need not be transcribed until the municipal or superior court receives notice as prescribed in paragraph (2) of subdivision (a).

(2) Upon receiving notification from the prosecution that the death penalty is being sought, the superior court shall notify the court in which the preliminary hearing took place. Upon this notification, the court in which the preliminary hearing took place shall order the transcription and preparation of the record of all proceedings prior to and including the preliminary hearing in the manner prescribed by the Judicial Council in the rules of court. The record of all proceedings prior to and including the preliminary hearing shall be certified by the court no later than 120 days following notification by the superior court unless the superior court grants an extension of time pursuant to rules of court adopted by the Judicial Council. Upon certification, the court in which the preliminary hearing took place shall forward the record to the superior court for incorporation into the superior court record.

(b) Any computer-readable transcript produced by court reporters pursuant to this section shall conform to the requirements of subdivision (c) of Section 269 of the Code of Civil Procedure.

SEC. 353. Section 682 of the Penal Code is amended to read:

682. Every public offense must be prosecuted by indictment or information, except:

1. Where proceedings are had for the removal of civil officers of the state;

2. Offenses arising in the militia when in actual service, and in the land and naval forces in the time of war, or which the state may keep, with the consent of Congress, in time of peace;

3. Misdemeanors and infractions;

4. A felony to which the defendant has pleaded guilty to the complaint before a magistrate, where permitted by law.

SEC. 354. Section 691 of the Penal Code is amended to read:

691. The following words have in Part 2 (commencing with Section 681) the signification attached to them in this section, unless it is otherwise apparent from the context:

(a) The words "competent court" when used with reference to the jurisdiction over any public offense, mean any court the subject matter jurisdiction of which includes the offense so mentioned.

(b) The words "jurisdictional territory" when used with reference to a court, mean the city and county, county, city, township, or other limited territory over which the criminal jurisdiction of the court extends, as provided by law, and in case of a superior court mean the county in which the court sits.

(c) The words "accusatory pleading" include an indictment, an information, an accusation, and a complaint.

(d) The words "prosecuting attorney" include any attorney, whether designated as district attorney, city attorney, city prosecutor, prosecuting attorney, or by any other title, having by law the right or duty to prosecute, on behalf of the people, any charge of a public offense.

(e) The word "county" includes county, city and county, and city.

(f) "Felony case" means a criminal action in which a felony is charged and includes a criminal action in which a misdemeanor or infraction is charged in conjunction with a felony.

(g) "Misdemeanor or infraction case" means a criminal action in which a misdemeanor or infraction is charged and does not include a criminal action in which a felony is charged in conjunction with a misdemeanor or infraction.

SEC. 355. Section 726 of the Penal Code is amended to read:

726. Where any number of persons, whether armed or not, are unlawfully or riotously assembled, the sheriff of the county and his or her deputies, the officials governing the town or city, or any of them, must go among the persons assembled, or as near to them as possible, and command them, in the name of the people of the state, immediately to disperse.

SEC. 356. Section 737 of the Penal Code is amended to read:

737. All felonies shall be prosecuted by indictment or information, except as provided in Section 859a. A proceeding pursuant to Section 3060 of the Government Code shall be prosecuted by accusation.

SEC. 357. Section 740 of the Penal Code is amended to read:

740. Except as otherwise provided by law, all misdemeanors and infractions must be prosecuted by written complaint under oath subscribed by the complainant. Such complaint may be verified on information and belief.

SEC. 358. Section 804 of the Penal Code is amended to read:

804. For the purpose of this chapter, prosecution for an offense is commenced when any of the following occurs:

(a) An indictment or information is filed.

(b) A complaint is filed charging a misdemeanor or infraction.

(c) A case is certified to the superior court.

(d) An arrest warrant or bench warrant is issued, provided the warrant names or describes the defendant with the same degree of particularity required for an indictment, information, or complaint.

SEC. 359. Section 806 of the Penal Code is amended to read:

806. A proceeding for the examination before a magistrate of a person on a charge of a felony must be commenced by written complaint under oath subscribed by the complainant and filed with the magistrate. Such complaint may be verified on information and belief. When the complaint is used as a pleading to which the defendant pleads guilty under Section 859a of this code, the complaint shall contain the same allegations, including the charge of prior conviction or convictions of crime, as are required for indictments and informations and, wherever applicable, shall be construed and shall have substantially the same effect as provided in this code for indictments and informations.

SEC. 360. Section 808 of the Penal Code is amended to read:

808. The following persons are magistrates:

1. The judges of the Supreme Court.

2. The judges of the courts of appeal.

3. The judges of the superior courts.

4. The judges of the municipal courts.

SEC. 361. Section 810 of the Penal Code is amended to read:

810. (a) The presiding judge of the superior court and the presiding judge of each municipal court in a county shall, as often as is necessary, designate on a schedule not less than one judge of the superior court or municipal court to be reasonably available on call as a magistrate for the setting of orders for discharge from actual custody upon bail, the issuance of search warrants, and for such other matters as may by the magistrate be deemed appropriate, at all times when a court is not in session in the county.

(b) The officer in charge of a jail, or a person the officer designates, in which an arrested person is held in custody shall assist the arrested person or the arrested person's attorney in contacting the magistrate on call as soon as possible for the purpose of obtaining release on bail.

(c) Any telephone call made pursuant to this section by an arrested person while in custody or by such person's attorney shall not count or be considered as a telephone call for purposes of Section 851.5 of the Penal Code.

SEC. 362. Section 813 of the Penal Code is amended to read:

813. (a) When a complaint is filed with a magistrate charging a felony originally triable in the superior court of the county in which he or she sits, if, and only if, the magistrate is satisfied from the

complaint that the offense complained of has been committed and that there is reasonable ground to believe that the defendant has committed it, the magistrate shall issue a warrant for the arrest of the defendant, except that, upon the request of the prosecutor, a summons instead of an arrest warrant shall be issued.

(b) A summons issued pursuant to this section shall be in substantially the same form as an arrest warrant and shall contain all of the following:

(1) The name of the defendant.

(2) The date and time the summons was issued.

(3) The city or county where the summons was issued.

(4) The signature of the magistrate, judge, justice, or other issuing authority who is issuing the summons with the title of his or her office and the name of the court or other issuing agency.

(5) The offense or offenses with which the defendant is charged.

(6) The time and place at which the defendant is to appear.

(7) Notification that the defendant is to complete the booking process on or before his or her first court appearance, as well as instructions for the defendant on completing the booking process.

(8) A provision for certification by the booking agency that the defendant has completed the booking process which shall be presented to the court by the defendant as proof of booking.

(c) If a defendant has been properly served with a summons and thereafter fails to appear at the designated time and place, a bench warrant for arrest shall issue. In the absence of proof of actual receipt of the summons by the defendant, a failure to appear shall not be used in any future proceeding.

(d) A defendant who responds to a summons issued pursuant to this section and who has not been booked as provided in subdivision (b) shall be ordered by the court to complete the booking process.

(e) The prosecutor shall not request the issuance of a summons in lieu of an arrest warrant as provided in this section under any of the following circumstances:

(1) The offense charged involves violence.

(2) The offense charged involves a firearm.

(3) The offense charged involves resisting arrest.

(4) There are one or more outstanding arrest warrants for the person.

(5) The prosecution of the offense or offenses with which the person is charged, or the prosecution of any other offense or offenses would be jeopardized.

(6) There is a reasonable likelihood that the offense or offenses would continue or resume, or that the safety of persons or property would be imminently endangered.

(7) There is reason to believe that the person would not appear at the time and place specified in the summons.

SEC. 363. Section 827 of the Penal Code is amended to read:

827. When a complaint is filed with a magistrate of the commission of a felony originally triable in the superior court of another county of the state than that in which the magistrate sits, but showing that the defendant is in the county where the complaint is filed, the same proceedings must be had as prescribed in this chapter, except that the warrant must require the defendant to be taken before the nearest or most accessible magistrate of the county in which the offense is triable, and the complaint must be delivered by the magistrate to the officer to whom the warrant is delivered.

SEC. 364. Section 829 of the Penal Code is amended to read:

829. When a complaint is filed with a magistrate of the commission of a misdemeanor or infraction triable in another county of the state than that in which the magistrate sits, but showing that the defendant is in the county where the complaint is filed, the officer must, upon being required by the defendant, take the defendant before a magistrate of the county in which the warrant was issued, who must admit the defendant to bail in the amount specified in the endorsement referred to in Section 815a, and immediately transmit the warrant, complaint, and undertaking to the clerk of the court in which the defendant is required to appear.

SEC. 365. Section 830.1 of the Penal Code is amended to read:

830.1. (a) Any sheriff, undersheriff, or deputy sheriff, employed in that capacity, of a county, any chief of police, employed in that capacity, of a city, any police officer, employed in that capacity and appointed by the chief of police or the chief executive of the agency, of a city, any chief of police, or police officer of a district (including police officers of the San Diego Unified Port District Harbor Police) authorized by statute to maintain a police department, any marshal or deputy marshal of a municipal court, any port warden or special officer of the Harbor Department of the City of Los Angeles, or any inspector or investigator employed in that capacity in the office of a district attorney, is a peace officer. The authority of these peace officers extends to any place in the state, as follows:

(1) As to any public offense committed or which there is probable cause to believe has been committed within the political subdivision which employs the peace officer.

(2) Where the peace officer has the prior consent of the chief of police, or person authorized by him or her to give consent, if the place is within a city or of the sheriff, or person authorized by him or her to give consent, if the place is within a county.

(3) As to any public offense committed or which there is probable cause to believe has been committed in the peace officer's presence, and with respect to which there is immediate danger to person or property, or of the escape of the perpetrator of the offense.

(b) Special agents and Attorney General investigators of the Department of Justice are peace officers, and those assistant chiefs, deputy chiefs, chiefs, deputy directors, and division directors designated as peace officers by the Attorney General are peace

officers. The authority of these peace officers extends to any place in the state where a public offense has been committed or where there is probable cause to believe one has been committed.

(c) Any deputy sheriff of a county of the first class who is employed to perform duties exclusively or initially relating to custodial assignments with responsibilities for maintaining the operations of county custodial facilities, including the custody, care, supervision, security, movement, and transportation of inmates, is a peace officer whose authority extends to any place in the state only while engaged in the performance of the duties of his or her respective employment and for the purpose of carrying out the primary function of employment relating to his or her custodial assignments, or when performing other law enforcement duties directed by his or her employing agency during a local state of emergency.

SEC. 365.5. Section 830.1 of the Penal Code is amended to read:

830.1. (a) Any sheriff, undersheriff, or deputy sheriff, employed in that capacity, of a county, any chief of police of a city or chief, director, or chief executive officer of a consolidated municipal public safety agency which performs police functions, any police officer, employed in that capacity and appointed by the chief of police or chief, director, or chief executive of a public safety agency, of a city, any chief of police, or police officer of a district (including police officers of the San Diego Unified Port District Harbor Police) authorized by statute to maintain a police department, any marshal or deputy marshal of a municipal court, any port warden or special officer of the Harbor Department of the City of Los Angeles, or any inspector or investigator employed in that capacity in the office of a district attorney, is a peace officer. The authority of these peace officers extends to any place in the state, as follows:

(1) As to any public offense committed or which there is probable cause to believe has been committed within the political subdivision which employs the peace officer.

(2) Where the peace officer has the prior consent of the chief of police or chief, director, or chief executive officer of a consolidated municipal public safety agency, or person authorized by him or her to give consent, if the place is within a city or of the sheriff, or person authorized by him or her to give consent, if the place is within a county.

(3) As to any public offense committed or which there is probable cause to believe has been committed in the peace officer's presence, and with respect to which there is immediate danger to person or property, or of the escape of the perpetrator of the offense.

(b) Special agents and Attorney General investigators of the Department of Justice are peace officers, and those assistant chiefs, deputy chiefs, chiefs, deputy directors, and division directors designated as peace officers by the Attorney General are peace officers. The authority of these peace officers extends to any place in

the state where a public offense has been committed or where there is probable cause to believe one has been committed.

(c) Any deputy sheriff of a county of the first class who is employed to perform duties exclusively or initially relating to custodial assignments with responsibilities for maintaining the operations of county custodial facilities, including the custody, care, supervision, security, movement, and transportation of inmates, is a peace officer whose authority extends to any place in the state only while engaged in the performance of the duties of his or her respective employment and for the purpose of carrying out the primary function of employment relating to his or her custodial assignments, or when performing other law enforcement duties directed by his or her employing agency during a local state-of-emergency.

SEC. 366. Section 832.4 of the Penal Code is amended to read:

832.4. (a) Any undersheriff or deputy sheriff of a county, any police officer of a city, and any police officer of a district authorized by statute to maintain a police department, who is first employed after January 1, 1974, and is responsible for the prevention and detection of crime and the general enforcement of the criminal laws of this state, shall obtain the basic certificate issued by the Commission on Peace Officer Standards and Training within 18 months of his or her employment in order to continue to exercise the powers of a peace officer after the expiration of the 18-month period.

(b) Every peace officer listed in subdivision (a) of Section 830.1, except a sheriff, or elected marshal, or a deputy sheriff described in subdivision (c) of Section 830.1, who is employed after January 1, 1988, shall obtain the basic certificate issued by the Commission on Peace Officer Standards and Training upon completion of probation, but in no case later than 24 months after his or her employment, in order to continue to exercise the powers of a peace officer after the expiration of the 24-month period.

Deputy sheriffs described in subdivision (c) of Section 830.1 shall obtain the basic certificate issued by the Commission on Peace Officer Standards and Training within 24 months after being reassigned from custodial duties to general law enforcement duties.

In those cases where the probationary period established by the employing agency is 24 months, the peace officers described in this subdivision may continue to exercise the powers of a peace officer for an additional three-month period to allow for the processing of the certification application.

SEC. 366.5. Section 832.4 of the Penal Code is amended to read:

832.4. (a) Any undersheriff or deputy sheriff of a county, any police officer of a city, and any police officer of a district authorized by statute to maintain a police department, who is first employed after January 1, 1974, and is responsible for the prevention and detection of crime and the general enforcement of the criminal laws of this state, shall obtain the basic certificate issued by the Commission on Peace Officer Standards and Training within 18

months of his or her employment in order to continue to exercise the powers of a peace officer after the expiration of the 18-month period.

(b) Every peace officer listed in subdivision (a) of Section 830.1, except a sheriff, or elected marshal, or a deputy sheriff described in subdivision (c) of Section 830.1, who is employed after January 1, 1988, shall obtain the basic certificate issued by the Commission on Peace Officer Standards and Training upon completion of probation, but in no case later than 24 months after his or her employment, in order to continue to exercise the powers of a peace officer after the expiration of the 24-month period.

Deputy sheriffs described in subdivision (c) of Section 830.1 shall obtain the basic certificate issued by the Commission on Peace Officer Standards and Training within 24 months after being reassigned from custodial duties to general law enforcement duties.

In those cases where the probationary period established by the employing agency is 24 months, the peace officers described in this subdivision may continue to exercise the powers of a peace officer for an additional three-month period to allow for the processing of the certification application.

(c) 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 obtain the basic certificate issued by the Commission on Peace Officer Standards and Training within two years of appointment.

SEC. 367. Section 851.8 of the Penal Code is amended to read:

851.8. (a) In any case where a person has been arrested and no accusatory pleading has been filed, the person arrested may petition the law enforcement agency having jurisdiction over the offense to destroy its records of the arrest. A copy of such petition shall be served upon the district attorney of the county having jurisdiction over the offense. The law enforcement agency having jurisdiction over the offense, upon a determination that the person arrested is factually innocent, shall, with the concurrence of the district attorney, seal its arrest records, and the petition for relief under this section for three years from the date of the arrest and thereafter destroy its arrest records and the petition. The law enforcement agency having jurisdiction over the offense shall notify the Department of Justice, and any law enforcement agency which arrested the petitioner or participated in the arrest of the petitioner for an offense for which the petitioner has been found factually innocent under this subdivision, of the sealing of the arrest records and the reason therefor. The Department of Justice and any law enforcement agency so notified shall forthwith seal their records of the arrest and the notice of sealing for three years from the date of the arrest, and thereafter destroy their records of the arrest and the notice of sealing. The law enforcement agency having jurisdiction over the offense and the Department of Justice shall request the destruction of any records of the arrest which they have given to any

local, state, or federal agency or to any other person or entity. Each such agency, person, or entity within the State of California receiving such a request shall destroy its records of the arrest and such request, unless otherwise provided in this section.

(b) If, after receipt by both the law enforcement agency and the district attorney of a petition for relief under subdivision (a), the law enforcement agency and district attorney do not respond to the petition by accepting or denying such petition within 60 days after the running of the relevant statute of limitations or within 60 days after receipt of the petition in cases where the statute of limitations has previously lapsed, then the petition shall be deemed to be denied. In any case where the petition of an arrestee to the law enforcement agency to have an arrest record destroyed is denied, petition may be made to the municipal court or the superior court in a county in which there is no municipal court which would have had territorial jurisdiction over the matter. A copy of such petition shall be served on the district attorney of the county having jurisdiction over the offense at least 10 days prior to the hearing thereon. The district attorney may present evidence to the court at such hearing. Notwithstanding Section 1538.5 or 1539, any judicial determination of factual innocence made pursuant to this section may be heard and determined upon declarations, affidavits, police reports, or any other evidence submitted by the parties which is material, relevant and reliable. A finding of factual innocence and an order for the sealing and destruction of records pursuant to this section shall not be made unless the court finds that no reasonable cause exists to believe that the arrestee committed the offense for which the arrest was made. In any court hearing to determine the factual innocence of a party, the initial burden of proof shall rest with the petitioner to show that no reasonable cause exists to believe that the arrestee committed the offense for which the arrest was made. If the court finds that this showing of no reasonable cause has been made by the petitioner, then the burden of proof shall shift to the respondent to show that a reasonable cause exists to believe that the petitioner committed the offense for which the arrest was made. If the court finds the arrestee to be factually innocent of the charges for which the arrest was made, then the court shall order the law enforcement agency having jurisdiction over the offense, the Department of Justice, and any law enforcement agency which arrested the petitioner or participated in the arrest of the petitioner for an offense for which the petitioner has been found factually innocent under this section to seal their records of the arrest and the court order to seal and destroy such records, for three years from the date of the arrest and thereafter to destroy their records of the arrest and the court order to seal and destroy such records. The court shall also order the law enforcement agency having jurisdiction over the offense and the Department of Justice to request the destruction of any records of the arrest which they have given to any local, state, or federal agency, person or entity. Each

state or local agency, person or entity within the State of California receiving such a request shall destroy its records of the arrest and the request to destroy such records, unless otherwise provided in this section. The court shall give to the petitioner a copy of any court order concerning the destruction of the arrest records.

(c) In any case where a person has been arrested, and an accusatory pleading has been filed, but where no conviction has occurred, the defendant may, at any time after dismissal of the action, petition the court which dismissed the action for a finding that the defendant is factually innocent of the charges for which the arrest was made. A copy of such petition shall be served on the district attorney of the county in which the accusatory pleading was filed at least 10 days prior to the hearing on the petitioner's factual innocence. The district attorney may present evidence to the court at such hearing. Such hearing shall be conducted as provided in subdivision (b). If the court finds the petitioner to be factually innocent of the charges for which the arrest was made, then the court shall grant the relief as provided in subdivision (b).

(d) In any case where a person has been arrested and an accusatory pleading has been filed, but where no conviction has occurred, the court may, with the concurrence of the district attorney, grant the relief provided in subdivision (b) at the time of the dismissal of the accusatory pleading.

(e) Whenever any person is acquitted of a charge and it appears to the judge presiding at the trial wherein such acquittal occurred that the defendant was factually innocent of such charge, the judge may grant the relief provided in subdivision (b).

(f) In any case where a person who has been arrested is granted relief pursuant to subdivision (a) or (b), the law enforcement agency having jurisdiction over the offense or court shall issue a written declaration to the arrestee stating that it is the determination of the law enforcement agency having jurisdiction over the offense or court that the arrestee is factually innocent of the charges for which the person was arrested and that the arrestee is thereby exonerated. Thereafter, the arrest shall be deemed not to have occurred and the person may answer accordingly any question relating to its occurrence.

(g) The Department of Justice shall furnish forms to be utilized by persons applying for the destruction of their arrest records and for the written declaration that one person was found factually innocent under subdivisions (a) and (b).

(h) Documentation of arrest records destroyed pursuant to subdivision (a), (b), (c), (d), or (e) which are contained in investigative police reports shall bear the notation "Exonerated" whenever reference is made to the arrestee. The arrestee shall be notified in writing by the law enforcement agency having jurisdiction over the offense of the sealing and destruction of the arrest records pursuant to this section.

(i) Any finding that an arrestee is factually innocent pursuant to subdivision (a), (b), (c), (d), or (e) shall not be admissible as evidence in any action.

(j) Destruction of records of arrest pursuant to subdivision (a), (b), (c), (d), or (e) shall be accomplished by permanent obliteration of all entries or notations upon such records pertaining to the arrest, and the record shall be prepared again so that it appears that the arrest never occurred. However, where (1) the only entries on the record pertain to the arrest and (2) the record can be destroyed without necessarily effecting the destruction of other records, then the document constituting the record shall be physically destroyed.

(k) No records shall be destroyed pursuant to subdivision (a), (b), (c), (d), or (e) if the arrestee or a codefendant has filed a civil action against the peace officers or law enforcement jurisdiction which made the arrest or instituted the prosecution and if the agency which is the custodian of such records has received a certified copy of the complaint in such civil action, until the civil action has been resolved. Any records sealed pursuant to this section by the court in the civil actions, upon a showing of good cause, may be opened and submitted into evidence. The records shall be confidential and shall be available for inspection only by the court, jury, parties, counsel for the parties and any other person authorized by the court. Immediately following the final resolution of the civil action, records subject to subdivision (a), (b), (c), (d), or (e) shall be sealed and destroyed pursuant to subdivision (a), (b), (c), (d), or (e).

(*l*) For arrests occurring on or after January 1, 1981, and for accusatory pleadings filed on or after January 1, 1981, petitions for relief under this section may be filed up to two years from the date of the arrest or filing of the accusatory pleading, whichever is later. Until January 1, 1983, petitioners can file for relief under this section for arrests which occurred or accusatory pleadings which were filed up to five years prior to the effective date of the statute. Any time restrictions on filing for relief under this section may be waived upon a showing of good cause by the petitioner and in the absence of prejudice.

(m) Any relief which is available to a petitioner under this section for an arrest shall also be available for an arrest which has been deemed to be or described as a detention under Section 849.5 or 851.6.

(n) The provisions of this section shall not apply to any offense which is classified as an infraction.

(o) (1) The provisions of this section shall be repealed on the effective date of a final judgment based on a claim under the California or United States Constitution holding that evidence which is relevant, reliable, and material may not be considered for purposes of a judicial determination of factual innocence under this section. For purposes of this subdivision, a judgment by the appellate division of a superior court is a final judgment if it is published and if it is not reviewed on appeal by a court of appeal. A judgment of a court of

appeal is a final judgment if it is published and if it is not reviewed by the California Supreme Court.

(2) Any such decision referred to in this subdivision shall be stayed pending appeal.

(3) If not otherwise appealed by a party to the action, any such decision referred to in this subdivision which is a judgment by the appellate division of the superior court, shall be appealed by the Attorney General.

(p) A judgment of the court under subdivision (b), (c), (d), or (e) is subject to the following appeal path:

(1) In a felony case, appeal is to the court of appeal.

(2) In a misdemeanor case, or in a case in which no accusatory pleading was filed, appeal is to the appellate division of the superior court.

SEC. 368. Section 859 of the Penal Code is amended to read:

859. When the defendant is charged with the commission of a felony by a written complaint subscribed under oath and on file in a court within the county in which the felony is triable, he or she shall, without unnecessary delay, be taken before a magistrate of the court in which the complaint is on file. The magistrate shall immediately deliver to the defendant a copy of the complaint, inform the defendant that he or she has the right to have the assistance of counsel, ask the defendant if he or she desires the assistance of counsel, and allow the defendant reasonable time to send for counsel. However, in a capital case, the court shall inform the defendant that the defendant must be represented in court by counsel at all stages of the preliminary and trial proceedings and that the representation will be at the defendant's expense if the defendant 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 the defendant desires to employ counsel of the defendant's choice or to have counsel assigned for him or her, and allow the defendant a reasonable time to send for his or her chosen or assigned counsel. If the defendant desires and is unable to employ counsel, the court shall assign counsel to defend him or her; in a capital case, 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 to defend him or her. If it appears that the defendant may be a minor, the magistrate shall ascertain whether that is the case, and if the magistrate concludes that it is probable that the defendant is a minor, he or she shall immediately either notify the parent or guardian of the minor, by telephone or messenger, of the arrest, or appoint counsel to represent the minor.

SEC. 369. Section 859a of the Penal Code is amended to read:

859a. (a) If the public offense charged is a felony not punishable with death, the magistrate shall immediately upon the appearance of counsel for the defendant read the complaint to the defendant and

ask him or her whether he or she pleads guilty or not guilty to the offense charged therein and to a previous conviction or convictions of crime if charged. While the charge remains pending before the magistrate and when the defendant's counsel is present, the defendant may plead guilty to the offense charged, or, with the consent of the magistrate and the district attorney or other counsel for the people, plead nolo contendere to the offense charged or plead guilty or nolo contendere to any other offense the commission of which is necessarily included in that with which he or she is charged, or to an attempt to commit the offense charged and to the previous conviction or convictions of crime if charged upon a plea of guilty or nolo contendere. The magistrate may then fix a reasonable bail as provided by this code, and upon failure to deposit the bail or surety, shall immediately commit the defendant to the sheriff. Upon accepting the plea of guilty or nolo contendere the magistrate shall certify the case, including a copy of all proceedings therein and any testimony that in his or her discretion he or she may require to be taken, to the court in which judgment is to be pronounced at the time specified under subdivision (b), and thereupon the proceedings shall be had as if the defendant had pleaded guilty in that court. This subdivision shall not be construed to authorize the receiving of a plea of guilty or nolo contendere from any defendant not represented by counsel. If the defendant subsequently files a written motion to withdraw the plea under Section 1018, the motion shall be heard and determined by the court before which the plea was entered.

(b) Notwithstanding Section 1191 or 1203, the magistrate shall, upon the receipt of a plea of guilty or nolo contendere and upon the performance of the other duties of the magistrate under this section, immediately appoint a time for pronouncing judgment in the superior court or municipal court and refer the case to the probation officer if eligible for probation, as prescribed in Section 1191.

SEC. 370. Section 859c is added to the Penal Code, to read:

859c. Procedures under this code that provide for superior court review of a challenged ruling or order made by a superior court judge or a magistrate shall be performed by a superior court judge other than the judge or magistrate who originally made the ruling or order, unless agreed to by the parties.

SEC. 371. Section 860 of the Penal Code is amended to read:

860. At the time set for the examination of the case, if the public offense is a felony punishable with death, or is a felony to which the defendant has not pleaded guilty in accordance with Section 859a of this code, then, if the defendant requires the aid of counsel, the magistrate must allow the defendant a reasonable time to send for counsel, and may postpone the examination for not less than two nor more than five days for that purpose. The magistrate must, immediately after the appearance of counsel, or if, after waiting a reasonable time therefor, none appears, proceed to examine the case; provided, however, that a defendant represented by counsel may

when brought before the magistrate as provided in Section 858 or at any time subsequent thereto, waive the right to an examination before such magistrate, and thereupon it shall be the duty of the magistrate to make an order holding the defendant to answer, and it shall be the duty of the district attorney within 15 days thereafter, to file in the superior court of the county in which the offense is triable the information; provided, further, however, that nothing contained herein shall prevent the district attorney nor the magistrate from requiring that an examination be held as provided in this chapter.

SEC. 372. Section 869 of the Penal Code is amended to read:

869. The testimony of each witness in cases of homicide shall be reduced to writing, as a deposition, by the magistrate, or under his or her direction, and in other cases upon the demand of the prosecuting attorney, or the defendant, or his or her counsel. The magistrate before whom the examination is had may, in his or her discretion, order the testimony and proceedings to be taken down in shorthand in all examinations herein mentioned, and for that purpose he or she may appoint a shorthand reporter. The deposition or testimony of the witness shall be authenticated in the following form:

(a) It shall state the name of the witness, his or her place of residence, and his or her business or profession; except that if the witness is a peace officer, it shall state his or her name, and the address given in his or her testimony at the hearing.

(b) It shall contain the questions put to the witness and his or her answers thereto, each answer being distinctly read to him or her as it is taken down, and being corrected or added to until it conforms to what he or she declares is the truth, except in cases where the testimony is taken down in shorthand, the answer or answers of the witness need not be read to him or her.

(c) If a question put be objected to on either side and overruled, or the witness declines answering it, that fact, with the ground on which the question was overruled or the answer declined, shall be stated.

(d) The deposition shall be signed by the witness, or if he or she refuses to sign it, his or her reason for refusing shall be stated in writing, as he or she gives it, except in cases where the deposition is taken down in shorthand, it need not be signed by the witness.

(e) The reporter shall, within 10 days after the close of the examination, if the defendant be held to answer the charge of a felony, or in any other case if either the defendant or the prosecution orders the transcript, transcribe his or her shorthand notes, making an original and one copy and as many additional copies thereof as there are defendants (other than fictitious defendants), regardless of the number of charges or fictitious defendants included in the same examination, and certify and deliver the original and all copies to the county clerk of the county in which the defendant was examined. The reporter shall, before receiving any compensation as a reporter, file

with the auditor of the county his or her affidavit setting forth that the transcript has been delivered to the county clerk within the time herein provided for. The compensation of the reporter for any services rendered by him or her as the reporter in any court of this state shall be reduced one-half if the provisions of this section as to the time of filing said transcript have not been complied with by him or her.

(f) In every case in which a transcript is delivered as provided in this section, the county clerk shall file the original of the transcript with the papers in the case, and shall deliver a copy of the transcript to the district attorney immediately upon his or her receipt thereof and shall deliver a copy of said transcript to each defendant (other than a fictitious defendant) at least five days before trial or upon earlier demand by him or her without cost to him or her; provided, that if any defendant be held to answer to two or more charges upon the same examination and thereafter the district attorney shall file separate informations upon said several charges, the delivery to each such defendant of one copy of the transcript of the examination shall be a compliance with this section as to all of those informations.

(g) If the transcript is delivered by the reporter within the time hereinbefore provided for, the reporter shall be entitled to receive the compensation fixed and allowed by law to reporters in the superior courts of this state.

SEC. 373. Section 949 of the Penal Code is amended to read:

949. The first pleading on the part of the people in the superior court in a felony case is the indictment, information, or the complaint in any case certified to the superior court under Section 859a. The first pleading on the part of the people in a misdemeanor or infraction case is the complaint except as otherwise provided by law. The first pleading on the part of the people in a proceeding pursuant to Section 3060 of the Government Code is an accusation.

SEC. 374. Section 977 of the Penal Code is amended to read:

977. (a) (1) In all cases in which the accused is charged with a misdemeanor only, he or she may appear by counsel only, except as provided in paragraph (2). If the accused agrees, the initial court appearance, arraignment, and plea may be by video, as provided by subdivision (c).

(2) When the accused is charged with a misdemeanor offense involving domestic violence, as defined in Section 6211 of the Family Code, or a misdemeanor violation of Section 273.6, upon a satisfactory showing of necessity, the court may order through counsel that the accused be personally present in court for the purpose of the service of an order under Section 136.2, unless the court determines that the defendant will make another court appearance within a reasonable period of time and the defendant could be served with a restraining order at that time.

(b) (1) In all cases in which a felony is charged, the accused shall be present at the arraignment, at the time of plea, during the

preliminary hearing, during those portions of the trial when evidence is taken before the trier of fact, and at the time of the imposition of sentence. The accused shall be personally present at all other proceedings unless he or she shall, with leave of court, execute in open court, a written waiver of his or her right to be personally present, as provided by paragraph (2). If the accused agrees, the initial court appearance, arraignment, and plea may be by video, as provided by subdivision (c).

(2) The accused may execute a written waiver of his or her right to be personally present, approved by his or her counsel, and the waiver shall be filed with the court. However, the court may specifically direct the defendant to be personally present at any particular proceeding or portion thereof. The waiver shall be substantially in the following form:

"WAIVER OF DEFENDANT'S PERSONAL PRESENCE"

"The undersigned defendant, having been advised of his or her right to be present at all stages of the proceedings, including, but not limited to, presentation of and arguments on questions of fact and law, and to be confronted by and cross-examine all witnesses, hereby waives the right to be present at the hearing of any motion or other proceeding in this cause. The undersigned defendant hereby requests the court to proceed during every absence of the defendant that the court may permit pursuant to this waiver, and hereby agrees that his or her interest is represented at all times by the presence of his or her attorney the same as if the defendant were personally present in court, and further agrees that notice to his or her attorney that his or her presence in court on a particular day at a particular time is required is notice to the defendant of the requirement of his or her appearance at that time and place."

(c) The court may permit the initial court appearance and arraignment in municipal or superior court of defendants held in any state, county, or local facility within the county on felony or misdemeanor charges, except for those defendants who were indicted by a grand jury, to be conducted by two-way electronic audiovideo communication between the defendant and the courtroom in lieu of the physical presence of the defendant in the courtroom. If the defendant is represented by counsel, the attorney shall be present with the defendant at the initial court appearance and arraignment, and may enter a plea during the arraignment. However, if the defendant is represented by counsel at an initial hearing in superior court in a felony case, and if the defendant does not plead guilty or nolo contendere to any charge, the attorney shall be present with the defendant or if the attorney is not present with the defendant, the attorney shall be present in court during the hearing. The defendant shall have the right to make his or her plea

while physically present in the courtroom if he or she so requests. If the defendant decides not to exercise the right to be physically present in the courtroom, he or she shall execute a written waiver of that right. A judge may order a defendant's personal appearance in court for the initial court appearance and arraignment. In a misdemeanor case, a judge may, pursuant to this subdivision, accept a plea of guilty or no contest from a defendant who is not physically in the courtroom. In a felony case, a judge may, pursuant to this subdivision, accept a plea of guilty or no contest from a defendant who is not physically in the courtroom if the parties stipulate thereto.

(d) Notwithstanding subdivision (c), if the defendant is represented by counsel, the attorney shall be present with the defendant in any county exceeding 4,000,000 persons in population.

SEC. 375. Section 977.2 of the Penal Code is amended to read:

977.2. (a) The Department of Corrections may establish a three-year pilot project as follows:

(1) Notwithstanding Section 977 or any other law, in all cases in which the defendant is charged with a misdemeanor or a felony and is currently incarcerated in the state prison, the Department of Corrections may arrange for the initial court appearance and arraignment in municipal or superior court to be conducted by two-way electronic audiovideo communication between the defendant and the courtroom in lieu of the physical presence of the defendant in the courtroom. Nothing in this section shall be interpreted to eliminate the authority of the court to issue an order requiring the defendant to be physically present in the courtroom in those cases where the court finds circumstances that require the physical presence of the defendant in the courtroom.

(2) If the defendant is represented by counsel, the attorney shall be present with the defendant at the initial court appearance and arraignment, and may enter a plea during the arraignment. However, if the defendant is represented by counsel at an initial hearing in superior court in a felony case, and if the defendant does not plead guilty or nolo contendere to any charge, the attorney shall be present with the defendant or if the attorney is not present with the defendant, the attorney shall be present in court during the hearing.

(3) In lieu of the physical presence of the defendant's counsel at the institution with the defendant, the court and the department shall establish a confidential telephone and facsimile transmission line between the court and the institution for communication between the defendant's counsel in court and the defendant at the institution. In this case, counsel for the defendant shall not be required to be physically present at the institution during the initial court appearance and arraignment via electronic audiovideo communication. Nothing in this section shall be construed to prohibit the physical presence of the defense counsel with the defendant at the state prison.

(b) The pilot project shall consist of not more than five institutions and shall include, at a minimum, one maximum security institution, one institution from Imperial County, and one institution housing females.

(c) A defendant who is physically present in an institution taking part in the pilot project, but who has committed a misdemeanor or felony at an institution not subject to the pilot project, may, at the discretion of the director, be waived from having the initial appearance and arraignment conducted by two-way electronic audiovideo communication subject to the limitations provided by this section.

(d) The department shall prepare and submit a report to the Legislature on or before June 30, 1999, that includes an assessment of the costs and benefits of the pilot project and a recommendation on whether to expand the pilot project statewide.

(e) This section shall remain in effect only until January 1, 2000, and as of that date is repealed.

SEC. 376. Section 977.4 of the Penal Code is amended to read:

977.4. (a) Upon adoption of a resolution by the board of supervisors, the County of Santa Barbara may establish a three-year pilot project to be conducted pursuant to this section.

(b) (1) Notwithstanding Section 977, in all cases in which the accused is charged with a misdemeanor only, he or she may appear by counsel only, except as provided in paragraph (2). If the accused agrees, the initial court appearance, arraignment, and plea may be by video, as provided by subdivision (d).

(2) When the accused is charged with a misdemeanor offense involving domestic violence, as defined in Section 6211 of the Family Code, or a misdemeanor violation of Section 273.6, upon a satisfactory showing of necessity, the court may order through counsel that the accused be personally present in court for the purpose of the service of an order under Section 136.2, unless the court determines that the defendant will make another court appearance within a reasonable period of time and the defendant could be served with a restraining order at that time.

(c) (1) In all cases in which a felony is charged, the accused shall be present at the arraignment, at the time of plea, during the preliminary hearing, during those portions of the trial when evidence is taken before the trier of fact, and at the time of the imposition of sentence. The accused shall be personally present at all other proceedings unless he or she shall, with leave of court, execute in open court, a written waiver of his or her right to be personally present, as provided by paragraph (2). If the accused agrees, the initial court appearance, arraignment, and plea may be by video, as provided by subdivision (d).

(2) The accused may execute a written waiver of his or her right to be personally present, approved by his or her counsel, and the waiver shall be filed with the court. However, the court may

specifically direct the defendant to be personally present at any particular proceeding or portion thereof. The waiver shall be substantially in the following form:

"WAIVER OF DEFENDANT'S PERSONAL PRESENCE"

"The undersigned defendant, having been advised of his or her right to be present at all stages of the proceedings, including, but not limited to, presentation of and arguments on questions of fact and law, and to be confronted by and cross-examine all witnesses, hereby waives the right to be present at the hearing of any motion or other proceeding in this cause. The undersigned defendant hereby requests the court to proceed during every absence of the defendant that the court may permit pursuant to this waiver, and hereby agrees that his or her interest is represented at all times by the presence of his or her attorney the same as if the defendant were personally present in court, and further agrees that notice to his or her attorney that his or her presence in court on a particular day at a particular time is required is notice to the defendant of the requirement of his or her appearance at that time and place."

(d) The court may permit the initial court appearance and arraignment in municipal or superior court of defendants held in any state, county, or local facility within the county on felony or misdemeanor charges, except for those defendants who were indicted by a grand jury, to be conducted by two-way electronic audiovideo communication between the defendant and the courtroom in lieu of the physical presence of the defendant in the courtroom. If the defendant is represented by counsel, the attorney shall be present with the defendant or, in courts where the two-way electronic audiovideo communication system permits confidential communication, the attorney may be present either in court or with the defendant. If the attorney is present in court, the defendant shall consult with the attorney via confidential two-way electronic audiovideo communication prior to the entry of any plea by the attorney. The defendant shall consult confidentially with his or her attorney in person prior to the entry of any plea, unless the defendant has expressly waived the right to be represented by an attorney. If the attorney is present at the detention facility with the defendant, the attorney may enter a plea during the arraignment via two-way electronic audiovideo communication pursuant to this subdivision. However, if the defendant is represented by counsel at an initial hearing in superior court in a felony case, and if the defendant does not plead guilty or nolo contendere to any charge, the attorney shall be present with the defendant or if the attorney is not present with the defendant, the attorney shall be present in court during the hearing. The defendant shall have the right to make his or her plea while physically present in the courtroom if he or she so requests. If

the defendant decides not to exercise the right to be physically present in the courtroom, he or she shall execute a written waiver of that right. A judge may order a defendant's personal appearance in court for the initial court appearance and arraignment. In a misdemeanor case, a judge may, pursuant to this subdivision, accept a plea of guilty or no contest from a defendant who is not physically in the courtroom. In a felony case, a judge may, pursuant to this subdivision, accept a plea of guilty or no contest from a defendant who is not physically in the courtroom if the parties stipulate thereto.

(e) For purposes of this section, "confidential communication" means a communication that is secured under the confidentiality of the attorney-client privilege (Article 3 (commencing with Section 950) of Chapter 4 of Division 8 of the Evidence Code).

(f) The public defender of the County of Santa Barbara shall evaluate the pilot project conducted pursuant to this section and submit a report to the Legislature on or before January 1, 1999, on that evaluation.

(g) This section shall remain operative only until July 1, 1999, and as of January 1, 2000, is repealed, unless a later enacted statute, that is enacted before January 1, 2000, deletes or extends that date.

SEC. 377. Section 987.1 of the Penal Code is amended to read:

987.1. Counsel at the preliminary examination shall continue to represent a defendant who has been ordered to stand trial for a felony until the date set for arraignment on the information unless relieved by the court upon the substitution of other counsel or for cause.

SEC. 378. Section 987.2 of the Penal Code is amended to read:

987.2. (a) In any case in which a person, including a person who is a minor, desires but is unable to employ counsel, and in which counsel is assigned in the superior or municipal court to represent the person in a criminal trial, proceeding, or appeal, the following assigned counsel shall receive a reasonable sum for compensation and for necessary expenses, the amount of which shall be determined by the court, to be paid out of the general fund of the county:

(1) In a county or city and county in which there is no public defender.

(2) In a county of the first, second, or third class where there is no contract for criminal defense services between the county and one or more responsible attorneys.

(3) In a case in which the court finds that, because of a conflict of interest or other reasons, the public defender has properly refused.

(4) In a county of the first, second, or third class where attorneys contracted by the county are unable to represent the person accused.

(b) The sum provided for in subdivision (a) may be determined by contract between the court and one or more responsible attorneys after consultation with the board of supervisors as to the total amount of compensation and expenses to be paid, which shall be within the amount of funds allocated by the board of supervisors for the cost of assigned counsel in those cases.

(c) In counties that utilize an assigned private counsel system as either the primary method of public defense or as the method of appointing counsel in cases where the public defender is unavailable, the county, the courts, or the local county bar association working with the courts are encouraged to do all of the following:

(1) Establish panels that shall be open to members of the State Bar of California.

(2) Categorize attorneys for panel placement on the basis of experience.

(3) Refer cases to panel members on a rotational basis within the level of experience of each panel, except that a judge may exclude an individual attorney from appointment to an individual case for good cause.

(4) Seek to educate those panel members through an approved training program.

(5) Establish a cost-efficient plan to ensure maximum recovery of costs pursuant to Section 987.8.

(d) In a county of the first, second, or third class, the court shall first utilize the services of the public defender to provide criminal defense services for indigent defendants. In the event that the public defender is unavailable and the county and the courts have contracted with one or more responsible attorneys or with a panel of attorneys to provide criminal defense services for indigent defendants, the court shall utilize the services of the county-contracted attorneys prior to assigning any other private counsel. Nothing in this subdivision shall be construed to require the appointment of counsel in any case in which the counsel has a conflict of interest. In the interest of justice, a court may depart from that portion of the procedure requiring appointment of a county-contracted attorney after making a finding of good cause and stating the reasons therefor on the record.

(e) In a county of the first, second, or third class, the court shall first utilize the services of the public defender to provide criminal defense services for indigent defendants. In the event that the public defender is unavailable and the county has created a second public defender and contracted with one or more responsible attorneys or with a panel of attorneys to provide criminal defense services for indigent defendants, and if the quality of representation provided by the second public defender is comparable to the quality of representation provided by the public defender, the court shall next utilize the services of the second public defender and then the services of the county-contracted attorneys prior to assigning any other private counsel. Nothing in this subdivision shall be construed to require the appointment of counsel in any case in which the counsel has a conflict of interest. In the interest of justice, a court may depart from that portion of the procedure requiring appointment of the second public defender or a county-contracted attorney after

making a finding of good cause and stating the reasons therefor on the record.

(f) In any case in which counsel is assigned as provided in subdivision (a), that counsel appointed by the court and any court-appointed licensed private investigator shall have the same rights and privileges to information as the public defender and the public defender investigator. It is the intent of the Legislature in enacting this subdivision to equalize any disparity that exists between the ability of private, court-appointed counsel and investigators, and public defenders and public defender investigators, to represent their clients. This subdivision is not intended to grant to private investigators access to any confidential Department of Motor Vehicles' information not otherwise available to them. This subdivision is not intended to extend to private investigators the right to issue subpoenas.

(g) Notwithstanding any other provision of this section, where an indigent defendant is first charged in one county and establishes an attorney-client relationship with the public defender, defense services contract attorney, or private attorney, and where the defendant is then charged with an offense in a second or subsequent county, the court in the second or subsequent county may appoint the same counsel as was appointed in the first county to represent the defendant when all of the following conditions are met:

(1) The offense charged in the second or subsequent county would be joinable for trial with the offense charged in the first if it took place in the same county, or involves evidence which would be cross-admissible.

(2) The court finds that the interests of justice and economy will be best served by unitary representation.

(3) Counsel appointed in the first county consents to the appointment.

(h) The county may recover costs of public defender services under Chapter 6 (commencing with Section 4750) of Title 5 of Part 3 for any case subject to Section 4750.

(i) Counsel shall be appointed to represent, in a misdemeanor case, a person who desires but is unable to employ counsel, when it appears that the appointment is necessary to provide an adequate and effective defense for the defendant. Appointment of counsel in an infraction case is governed by Section 19.6.

(j) As used in this section, "county of the first, second, or third class" means the county of the first class, county of the second class, and county of the third class as provided by Sections 28020, 28022, 28023, and 28024 of the Government Code.

SEC. 379. Section 988 of the Penal Code is amended to read:

988. The arraignment must be made by the court, or by the clerk or prosecuting attorney under its direction, and consists in reading the accusatory pleading to the defendant and delivering to the defendant a true copy thereof, and of the endorsements thereon, if

any, including the list of witnesses, and asking the defendant whether the defendant pleads guilty or not guilty to the accusatory pleading; provided, that where the accusatory pleading is a complaint charging a misdemeanor, a copy of the same need not be delivered to any defendant unless requested by the defendant.

SEC. 380. Section 990 of the Penal Code is amended to read:

990. If on the arraignment, the defendant requires it, the defendant must be allowed a reasonable time to answer, which shall be not less than one day in a felony case and not more than seven days in a misdemeanor or infraction case.

SEC. 381. Section 1000 of the Penal Code is amended to read:

1000. (a) This chapter shall apply whenever a case is before any court upon an accusatory pleading for a violation of Section 11350, 11357, 11364, 11365, 11377, or 11550 of the Health and Safety Code, or Section 11358 of the Health and Safety Code if the marijuana planted, cultivated, harvested, dried, or processed is for personal use, or Section 11368 of the Health and Safety Code if the narcotic drug was secured by a fictitious prescription and is for the personal use of the defendant and was not sold or furnished to another, or subdivision (d) of Section 653f if the solicitation was for acts directed to personal use only, or Section 381 or subdivision (f) of Section 647 of the Penal Code, if for being under the influence of a controlled substance, or Section 4230 of the Business and Professions Code, and it appears to the prosecuting attorney that, except as provided in subdivision (b) of Section 11357 of the Health and Safety Code, all of the following apply to the defendant:

(1) The defendant has no conviction for any offense involving controlled substances prior to the alleged commission of the charged offense.

(2) The offense charged did not involve a crime of violence or threatened violence.

(3) There is no evidence of a violation relating to narcotics or restricted dangerous drugs other than a violation of the sections listed in this subdivision.

(4) The defendant's record does not indicate that probation or parole has ever been revoked without thereafter being completed.

(5) The defendant's record does not indicate that he or she has successfully completed or been terminated from diversion or deferred entry of judgment pursuant to this chapter within five years prior to the alleged commission of the charged offense.

(6) The defendant has no prior felony conviction within five years prior to the alleged commission of the charged offense.

(b) The prosecuting attorney shall review his or her file to determine whether or not paragraphs (1) to (6), inclusive, of subdivision (a) apply to the defendant. Upon the agreement of the prosecuting attorney, law enforcement, the public defender, and the presiding judge of the criminal division of the municipal court or of the superior court in a county in which there is no municipal court,

or a judge designated by the presiding judge, this procedure shall be completed as soon as possible after the initial filing of the charges. If the defendant is found eligible, the prosecuting attorney shall file with the court a declaration in writing or state for the record the grounds upon which the determination is based, and shall make this information available to the defendant and his or her attorney. This procedure is intended to allow the court to set the hearing for deferred entry of judgment at the arraignment. If the defendant is found ineligible for deferred entry of judgment, the prosecuting attorney shall file with the court a declaration in writing or state for the record the grounds upon which the determination is based, and shall make this information available to the defendant and his or her attorney. The sole remedy of a defendant who is found ineligible for deferred entry of judgment is a postconviction appeal.

(c) All referrals for deferred entry of judgment granted by the court pursuant to this chapter shall be made only to programs that have been certified by the county drug program administrator pursuant to Chapter 1.5 (commencing with Section 1211) of Title 8, or to programs that provide services at no cost to the participant and have been deemed by the court and the county drug program administrator to be credible and effective. The defendant may request to be referred to a program in any county, as long as that program meets the criteria set forth in this subdivision.

(d) Deferred entry of judgment for a violation of Section 11368 of the Health and Safety Code shall not prohibit any administrative agency from taking disciplinary action against a licensee or from denying a license. Nothing in this subdivision shall be construed to expand or restrict the provisions of Section 1000.4.

(e) Any defendant who is participating in a program referred to in this section may be required to undergo analysis of his or her urine for the purpose of testing for the presence of any drug as part of the program. However, urine analysis results shall not be admissible as a basis for any new criminal prosecution or proceeding.

SEC. 382. Section 1007 of the Penal Code is amended to read:

1007. Upon considering the demurrer, the court must make an order either overruling or sustaining it. If the demurrer to an indictment or information is overruled, the court must permit the defendant, at the defendant's election, to plead, which the defendant must do forthwith, unless the court extends the time. If the demurrer is sustained, the court must, if the defect can be remedied by amendment, permit the indictment or information to be amended, either forthwith or within such time, not exceeding 10 days, as it may fix, or, if the defect or insufficiency therein cannot be remedied by amendment, the court may direct the filing of a new information or the submission of the case to the same or another grand jury. If the demurrer to a complaint is sustained, the court must, if the defect can be remedied, permit the filing of an amended complaint within such

time not exceeding 10 days as it may fix. The orders made under this section shall be entered in the docket or minutes of the court.

SEC. 383. Section 1009 of the Penal Code is amended to read:

1009. An indictment, accusation or information may be amended by the district attorney, and an amended complaint may be filed by the prosecuting attorney, without leave of court at any time before the defendant pleads or a demurrer to the original pleading is sustained. The court in which an action is pending may order or permit an amendment of an indictment, accusation or information, or the filing of an amended complaint, for any defect or insufficiency, at any stage of the proceedings, or if the defect in an indictment or information be one that cannot be remedied by amendment, may order the case submitted to the same or another grand jury, or a new information to be filed. The defendant shall be required to plead to such amendment or amended pleading forthwith, or, at the time fixed for pleading, if the defendant has not yet pleaded and the trial or other proceeding shall continue as if the pleading had been originally filed as amended, unless the substantial rights of the defendant would be prejudiced thereby, in which event a reasonable postponement, not longer than the ends of justice require, may be granted. An indictment or accusation cannot be amended so as to change the offense charged, nor an information so as to charge an offense not shown by the evidence taken at the preliminary examination. A complaint cannot be amended to charge an offense not attempted to be charged by the original complaint, except that separate counts may be added which might properly have been joined in the original complaint. The amended complaint must be verified but may be verified by some person other than the one who made oath to the original complaint.

SEC. 384. Section 1010 of the Penal Code is amended to read:

1010. When an indictment or information is dismissed after the sustaining of a demurrer, or at any other stage of the proceedings because of any defect or insufficiency of the indictment or information, if the court directs that the case be resubmitted to the same or another grand jury or that a new information be filed, the defendant shall not be discharged from custody, nor the defendant's bail exonerated nor money or other property deposited instead of bail on the defendant's behalf refunded, but the same proceedings must be had on such direction as are prescribed in Sections 997 and 998.

SEC. 385. Section 1016 of the Penal Code is amended to read:

1016. There are six kinds of pleas to an indictment or an information, or to a complaint charging a misdemeanor or infraction:

1. Guilty.

2. Not guilty.

3. Nolo contendere, subject to the approval of the court. The court shall ascertain whether the defendant completely understands that a plea of nolo contendere shall be considered the same as a plea of

guilty and that, upon a plea of nolo contendere, the court shall find the defendant guilty. The legal effect of such a plea, to a crime punishable as a felony, shall be the same as that of a plea of guilty for all purposes. In cases other than those punishable as felonies, the plea and any admissions required by the court during any inquiry it makes as to the voluntariness of, and factual basis for, the plea may not be used against the defendant as an admission in any civil suit based upon or growing out of the act upon which the criminal prosecution is based.

4. A former judgment of conviction or acquittal of the offense charged.

5. Once in jeopardy.

6. Not guilty by reason of insanity.

A defendant who does not plead guilty may enter one or more of the other pleas. A defendant who does not plead not guilty by reason of insanity shall be conclusively presumed to have been sane at the time of the commission of the offense charged; provided, that the court may for good cause shown allow a change of plea at any time before the commencement of the trial. A defendant who pleads not guilty by reason of insanity, without also pleading not guilty, thereby admits the commission of the offense charged.

SEC. 386. Section 1038 of the Penal Code is amended to read:

1038. (a) The Judicial Council shall adopt rules of practice and procedure for the change of venue in criminal actions.

(b) Judicial Council rules may provide for transfer of a misdemeanor or infraction case in the superior court in a county in which there is no municipal court to another branch or location of the superior court in the same county.

SEC. 387. Section 1039 is added to the Penal Code, to read:

1039. A change of venue in a misdemeanor or infraction case shall be to a municipal court in the county to which the case is transferred or to the superior court if there is no municipal court in that county.

SEC. 388. Section 1050 of the Penal Code is amended to read:

1050. (a) The welfare of the people of the State of California requires that all proceedings in criminal cases shall be set for trial and heard and determined at the earliest possible time. To this end, the Legislature finds that the criminal courts are becoming increasingly congested with resulting adverse consequences to the welfare of the people and the defendant. Excessive continuances contribute substantially to this congestion and cause substantial hardship to victims and other witnesses. Continuances also lead to longer periods of presentence confinement for those defendants in custody and the concomitant overcrowding and increased expenses of local jails. It is therefore recognized that the people, the defendant, and the victims and other witnesses have the right to an expeditious disposition, and to that end it shall be the duty of all courts and judicial officers and of all counsel, both for the prosecution and the defense, to expedite these proceedings to the greatest degree that is consistent with the

ends of justice. In accordance with this policy, criminal cases shall be given precedence over, and set for trial and heard without regard to the pendency of, any civil matters or proceedings.

(b) To continue any hearing in a criminal proceeding, including the trial, (1) a written notice shall be filed and served on all parties to the proceeding at least two court days before the hearing sought to be continued, together with affidavits or declarations detailing specific facts showing that a continuance is necessary and (2) within two court days of learning that he or she has a conflict in the scheduling of any court hearing, including a trial, an attorney shall notify the calendar clerk of each court involved, in writing, indicating which hearing was set first. A party shall not be deemed to have been served within the meaning of this section until that party actually has received a copy of the documents to be served, unless the party, after receiving actual notice of the request for continuance, waives the right to have the documents served in a timely manner. Regardless of the proponent of the motion, the prosecuting attorney shall notify people's witnesses and the defense attorney shall notify defense's witnesses of the notice of motion, the date of the hearing, and the witnesses' right to be heard by the court. The superior and municipal courts of a county may adopt rules, which shall be consistent, regarding the method of giving the notice or waiver of service required by this subdivision, where a continuance is sought because of a conflict between scheduled appearances in the courts of that county.

(c) Notwithstanding subdivision (b), a party may make a motion for a continuance without complying with the requirements of that subdivision. However, unless the moving party shows good cause for the failure to comply with those requirements, the court may impose sanctions as provided in Section 1050.5.

(d) When a party makes a motion for a continuance without complying with the requirements of subdivision (b), the court shall hold a hearing on whether there is good cause for the failure to comply with those requirements. At the conclusion of the hearing the court shall make a finding whether good cause has been shown and, if it finds that there is good cause, shall state on the record the facts proved that justify its finding. A statement of the finding and a statement of facts proved shall be entered in the minutes. If the moving party is unable to show good cause for the failure to give notice, the motion for continuance shall not be granted.

(e) Continuances shall be granted only upon a showing of good cause. Neither the convenience of the parties nor a stipulation of the parties is in and of itself good cause.

(f) At the conclusion of the motion for continuance, the court shall make a finding whether good cause has been shown and, if it finds that there is good cause, shall state on the record the facts proved that justify its finding. A statement of facts proved shall be entered in the minutes.

(g) When deciding whether or not good cause for a continuance has been shown, the court shall consider the general convenience and prior commitments of all witnesses, including peace officers. Both the general convenience and prior commitments of each witness also shall be considered in selecting a continuance date if the motion is granted. The facts as to inconvenience or prior commitments may be offered by the witness or by a party to the case.

For purposes of this section, "good cause" includes, but is not limited to, those cases involving allegations that a violation of one or more of the sections specified in subdivision (a) of Section 11165.1 or Section 11165.6, or domestic violence as defined in Section 13700, has occurred and the prosecuting attorney assigned to the case has another trial, preliminary hearing, or motion to suppress in progress in that court or another court. A continuance under this paragraph shall be limited to a maximum of 10 additional court days.

(h) Upon a showing that the attorney of record at the time of the defendant's first appearance in the superior court on an indictment or information is a Member of the Legislature of this state and that the Legislature is in session or that a legislative interim committee of which the attorney is a duly appointed member is meeting or is to meet within the next seven days, the defendant shall be entitled to a reasonable continuance not to exceed 30 days.

(i) A continuance shall be granted only for that period of time shown to be necessary by the evidence considered at the hearing on the motion. Whenever any continuance is granted, the court shall state on the record the facts proved that justify the length of the continuance, and those facts shall be entered in the minutes.

(j) Whenever it shall appear that any court may be required, because of the condition of its calendar, to dismiss an action pursuant to Section 1382, the court must immediately notify the Chair of the Judicial Council.

(k) This section shall not apply when the preliminary examination is set on a date less than 10 court days from the date of the defendant's arraignment on the complaint, and the prosecution or the defendant moves to continue the preliminary examination to a date not more than 10 court days from the date of the defendant's arraignment on the complaint.

SEC. 388.5. Section 1050 of the Penal Code is amended to read:

1050. (a) The welfare of the people of the State of California requires that all proceedings in criminal cases shall be set for trial and heard and determined at the earliest possible time. To this end the Legislature finds that the criminal courts are becoming increasingly congested with resulting adverse consequences to the welfare of the people and the defendant. Excessive continuances contribute substantially to this congestion and cause substantial hardship to victims and other witnesses. Continuances also lead to longer periods of presentence confinement for those defendants in custody and the concomitant overcrowding and increased expenses of local jails. It is

therefore recognized that the people, the defendant, and the victims and other witnesses have the right to an expeditious disposition, and to that end it shall be the duty of all courts and judicial officers and of all counsel, both for the prosecution and the defense, to expedite these proceedings to the greatest degree that is consistent with the ends of justice. In accordance with this policy, criminal cases shall be given precedence over, and set for trial and heard without regard to the pendency of, any civil matters or proceedings.

(b) To continue any hearing in a criminal proceeding, including the trial, (1) a written notice shall be filed and served on all parties to the proceeding at least two court days before the hearing sought to be continued, together with affidavits or declarations detailing specific facts showing that a continuance is necessary and (2) within two court days of learning that he or she has a conflict in the scheduling of any court hearing, including a trial, an attorney shall notify the calendar clerk of each court involved, in writing, indicating which hearing was set first. A party shall not be deemed to have been served within the meaning of this section until that party actually has received a copy of the documents to be served, unless the party, after receiving actual notice of the request for continuance, waives the right to have the documents served in a timely manner. Regardless of the proponent of the motion, the prosecuting attorney shall notify the people's witnesses and the defense attorney shall notify the defense's witnesses of the notice of motion, the date of the hearing, and the witnesses' right to be heard by the court. The superior and municipal courts of a county may adopt rules, which shall be consistent, regarding the method of giving the notice or waiver of service required by this subdivision, where a continuance is sought because of a conflict between scheduled appearances in the courts of that county.

(c) Notwithstanding subdivision (b), a party may make a motion for a continuance without complying with the requirements of that subdivision. However, unless the moving party shows good cause for the failure to comply with those requirements, the court may impose sanctions as provided in Section 1050.5.

(d) When a party makes a motion for a continuance without complying with the requirements of subdivision (b), the court shall hold a hearing on whether there is good cause for the failure to comply with those requirements. At the conclusion of the hearing the court shall make a finding whether good cause has been shown and, if it finds that there is good cause, shall state on the record the facts proved that justify its finding. A statement of the finding and a statement of facts proved shall be entered in the minutes. If the moving party is unable to show good cause for the failure to give notice, the motion for continuance shall not be granted.

(e) Continuances shall be granted only upon a showing of good cause. Neither the convenience of the parties nor a stipulation of the parties is in and of itself good cause.

(f) At the conclusion of the motion for continuance, the court shall make a finding whether good cause has been shown and, if it finds that there is good cause, shall state on the record the facts proved that justify its finding. A statement of facts proved shall be entered in the minutes.

(g) When deciding whether or not good cause for a continuance has been shown, the court shall consider the general convenience and prior commitments of all witnesses, including peace officers. Both the general convenience and prior commitments of each witness also shall be considered in selecting a continuance date if the motion is granted. The facts as to inconvenience or prior commitments may be offered by the witness or by a party to the case.

For purposes of this section, "good cause" includes, but is not limited to, those cases involving murder, as defined in subdivision (a) of Section 187, allegations that a violation of one or more of the sections specified in subdivision (a) of Section 11165.1 or Section 11165.6, or domestic violence as defined in Section 13700, has occurred and the prosecuting attorney assigned to the case has another trial, preliminary hearing, or motion to suppress in progress in that court or another court. A continuance under this paragraph shall be limited to a maximum of 10 additional court days.

(h) Upon a showing that the attorney of record at the time of the defendant's first appearance in the superior court on an indictment or information is a Member of the Legislature of this state and that the Legislature is in session or that a legislative interim committee of which the attorney is a duly appointed member is meeting or is to meet within the next seven days, the defendant shall be entitled to a reasonable continuance not to exceed 30 days.

(i) A continuance shall be granted only for that period of time shown to be necessary by the evidence considered at the hearing on the motion. Whenever any continuance is granted, the court shall state on the record the facts proved that justify the length of the continuance, and those facts shall be entered in the minutes.

(j) Whenever it shall appear that any court may be required, because of the condition of its calendar, to dismiss an action pursuant to Section 1382, the court must immediately notify the Chair of the Judicial Council.

(k) This section shall not apply when the preliminary examination is set on a date less than 10 court days from the date of the defendant's arraignment on the complaint, and the prosecution or the defendant moves to continue the preliminary examination to a date not more than 10 court days from the date of the defendant's arraignment on the complaint.

SEC. 389. Section 1130 of the Penal Code is amended to read:

1130. If the prosecuting attorney fails to attend at the trial of a felony, the court must appoint an attorney at law to perform the duties of the prosecuting attorney on such trial.

SEC. 390. Section 1150 of the Penal Code is amended to read:

1150. The jury must render a general verdict, except that in a felony case, when they are in doubt as to the legal effect of the facts proved, they may, except upon a trial for libel, find a special verdict.

SEC. 391. Section 1187 of the Penal Code is amended to read:

1187. The effect of an order arresting judgment, in a felony case, is to place the defendant in the same situation in which the defendant was immediately before the indictment was found or information filed. In a misdemeanor or infraction case, the effect is to place the defendant in the situation in which the defendant was before the trial was had.

SEC. 392. Section 1191 of the Penal Code is amended to read:

1191. In a felony case, after a plea, finding, or verdict of guilty, or after a finding or verdict against the defendant on a plea of a former conviction or acquittal, or once in jeopardy, the court shall appoint a time for pronouncing judgment, which shall be within 20 judicial days after the verdict, finding, or plea of guilty, during which time the court shall refer the case to the probation officer for a report if eligible for probation and pursuant to Section 1203. However, the court may extend the time not more than 10 days for the purpose of hearing or determining any motion for a new trial, or in arrest of judgment, and may further extend the time until the probation officer's report is received and until any proceedings for granting or denying probation have been disposed of. If, in the opinion of the court, there is a reasonable ground for believing a defendant insane, the court may extend the time for pronouncing sentence until the question of insanity has been heard and determined, as provided in this code. If the court orders the defendant placed in a diagnostic facility pursuant to Section 1203.03, the time otherwise allowed by this section for pronouncing judgment is extended by a period equal to (1) the number of days which elapse between the date of the order and the date on which notice is received from the Director of Corrections advising whether or not the Department of Corrections will receive the defendant in the facility, and (2) if the director notifies the court that it will receive the defendant, the time which elapses until his or her return to the court from the facility.

SEC. 393. Section 1203.1 of the Penal Code is amended to read:

1203.1. (a) The court, or judge thereof, in the order granting probation, may suspend the imposing or the execution of the sentence and may direct that the suspension may continue for a period of time not exceeding the maximum possible term of the sentence, except as hereinafter set forth, and upon those terms and conditions as it shall determine. The court, or judge thereof, in the order granting probation and as a condition thereof, may imprison the defendant in a county jail for a period not exceeding the maximum time fixed by law in the case.

However, where the maximum possible term of the sentence is five years or less, then the period of suspension of imposition or execution

of sentence may, in the discretion of the court, continue for not over five years. The following shall apply to this subdivision:

(1) The court may fine the defendant in a sum not to exceed the maximum fine provided by law in the case.

(2) The court may, in connection with granting probation, impose either imprisonment in a county jail or a fine, both, or neither.

(3) The court shall provide for restitution in proper cases.

(4) The court may require bonds for the faithful observance and performance of any or all of the conditions of probation.

(b) The court shall consider whether the defendant as a condition of probation shall make restitution to the victim or the Restitution Fund. Any restitution payment received by a probation department in the form of cash or money order shall be forwarded to the victim within 30 days from the date the payment is received by the department. Any restitution payment received by a probation department in the form of a check or draft shall be forwarded to the victim within 45 days from the date the payment is received by the department, provided, that payment need not be forwarded to a victim until 180 days from the date the first payment is received, if the restitution payments for that victim received by the probation department total less than fifty dollars ($50). In cases where the court has ordered the defendant to pay restitution to multiple victims and where the administrative cost of disbursing restitution payments to multiple victims involves a significant cost, any restitution payment received by a probation department shall be forwarded to multiple victims when it is cost-effective to do so, but in no event shall restitution disbursements be delayed beyond 180 days from the date the payment is received by the probation department.

(c) In counties or cities and counties where road camps, farms, or other public work is available the court may place the probationer in the road camp, farm, or other public work instead of in jail. In this case, Section 25359 of the Government Code shall apply to probation and the court shall have the same power to require adult probationers to work, as prisoners confined in the county jail are required to work, at public work. Each county board of supervisors may fix the scale of compensation of the adult probationers in that county.

(d) In all cases of probation the court may require as a condition of probation that the probationer go to work and earn money for the support of his or her dependents or to pay any fine imposed or reparation condition, to keep an account of his or her earnings, to report them to the probation officer and apply those earnings as directed by the court.

(e) The court shall also consider whether the defendant as a condition of probation shall make restitution to a public agency for the costs of an emergency response pursuant to Article 8 (commencing with Section 53150) of Chapter 1 of Part 1 of Division 2 of the Government Code.

(f) In all felony cases in which, as a condition of probation, a judge of the superior court sitting by authority of law elsewhere than at the county seat requires a convicted person to serve his or her sentence at intermittent periods the sentence may be served on the order of the judge at the city jail nearest to the place at which the court is sitting, and the cost of his or her maintenance shall be a county charge.

(g) (1) The court and prosecuting attorney shall consider whether any defendant who has been convicted of a nonviolent or nonserious offense and ordered to participate in community service as a condition of probation shall be required to engage in the removal of graffiti in the performance of the community service. For the purpose of this subdivision, a nonserious offense shall not include the following:

(A) Offenses in violation of the Dangerous Weapons' Control Law (Chapter 1 (commencing with Section 12000) of Title 2 of Part 4).

(B) Offenses involving the use of a dangerous or deadly weapon, including all violations of Section 417.

(C) Offenses involving the use or attempted use of violence against the person of another or involving injury to a victim.

(D) Offenses involving annoying or molesting children.

(2) Notwithstanding subparagraph (A) of paragraph (1), any person who violates Section 12101 shall be ordered to perform not less than 100 hours and not more than 500 hours of community service as a condition of probation.

(3) The court and the prosecuting attorney need not consider a defendant pursuant to paragraph (1) if the following circumstances exist:

(A) The defendant was convicted of any offense set forth in subdivision (c) of Section 667.5 or subdivision (c) of Section 1192.7.

(B) The judge believes that the public safety may be endangered if the person is ordered to do community service or the judge believes that the facts or circumstances or facts and circumstances call for imposition of a more substantial penalty.

(h) The probation officer or his or her designated representative shall consider whether any defendant who has been convicted of a nonviolent and nonserious offense and ordered to participate in community service as a condition of probation shall be required to engage in the performance of house repairs or yard services for senior citizens and the performance of repairs to senior centers through contact with local senior service organizations in the performance of the community service.

(i) Upon conviction of any offense involving child abuse or neglect, the court may require, in addition to any or all of the above-mentioned terms of imprisonment, fine, and other reasonable conditions, that the defendant shall participate in counseling or education programs, or both, including, but not limited to, parent

education or parenting programs operated by community colleges, school districts, other public agencies, or private agencies.

(j) The court may impose and require any or all of the above-mentioned terms of imprisonment, fine, and conditions, and other reasonable conditions, as it may determine are fitting and proper to the end that justice may be done, that amends may be made to society for the breach of the law, for any injury done to any person resulting from that breach, and generally and specifically for the reformation and rehabilitation of the probationer, and that should the probationer violate any of the terms or conditions imposed by the court in the matter, it shall have authority to modify and change any and all of the terms and conditions and to reimprison the probationer in the county jail within the limitations of the penalty of the public offense involved. Upon the defendant being released from the county jail under the terms of probation as originally granted or any modification subsequently made, and in all cases where confinement in a county jail has not been a condition of the grant of probation, the court shall place the defendant or probationer in and under the charge of the probation officer of the court, for the period or term fixed for probation. However, upon the payment of any fine imposed and the fulfillment of all conditions of probation, probation shall cease at the end of the term of probation, or sooner, in the event of modification. In counties and cities and counties in which there are facilities for taking fingerprints, those of each probationer shall be taken and a record of them kept and preserved.

(k) Notwithstanding any other provisions of law to the contrary, except as provided in Section 13967, as operative on or before September 28, 1994, of the Government Code and Section 13967.5 of the Government Code and Sections 1202.4, 1463.16, paragraph (1) of subdivision (a) of Section 1463.18, and Section 1464, and Section 1203.04, as operative on or before August 2, 1995, all fines collected by a county probation officer in any of the courts of this state, as a condition of the granting of probation or as a part of the terms of probation, shall be paid into the county treasury and placed in the general fund for the use and benefit of the county.

(*l*) If the court orders restitution to be made to the victim, the board of supervisors may add a fee to cover the actual administrative cost of collecting restitution but not to exceed 10 percent of the total amount ordered to be paid. The fees shall be paid into the general fund of the county treasury for the use and benefit of the county.

SEC. 393.3. Section 1203.1 of the Penal Code is amended to read:

1203.1. (a) The court, or judge thereof, in the order granting probation, may suspend the imposing or the execution of the sentence and may direct that the suspension may continue for a period of time not exceeding the maximum possible term of the sentence, except as hereinafter set forth, and upon those terms and conditions as it shall determine. The court, or judge thereof, in the order granting probation and as a condition thereof, may imprison

the defendant in a county jail for a period not exceeding the maximum time fixed by law in the case.

However, where the maximum possible term of the sentence is five years or less, then the period of suspension of imposition or execution of sentence may, in the discretion of the court, continue for not over five years. The following shall apply to this subdivision:

(1) The court may fine the defendant in a sum not to exceed the maximum fine provided by law in the case.

(2) The court may, in connection with granting probation, impose either imprisonment in a county jail or a fine, both, or neither.

(3) The court shall provide for restitution in proper cases. The restitution order shall be fully enforceable as a civil judgment forthwith and in accordance with Section 1202.4 of the Penal Code.

(4) The court may require bonds for the faithful observance and performance of any or all of the conditions of probation.

(b) The court shall consider whether the defendant as a condition of probation shall make restitution to the victim or the Restitution Fund. Any restitution payment received by a probation department in the form of cash or money order shall be forwarded to the victim within 30 days from the date the payment is received by the department. Any restitution payment received by a probation department in the form of a check or draft shall be forwarded to the victim within 45 days from the date the payment is received by the department, provided, that payment need not be forwarded to a victim until 180 days from the date the first payment is received, if the restitution payments for that victim received by the probation department total less than fifty dollars ($50). In cases where the court has ordered the defendant to pay restitution to multiple victims and where the administrative cost of disbursing restitution payments to multiple victims involves a significant cost, any restitution payment received by a probation department shall be forwarded to multiple victims when it is cost-effective to do so, but in no event shall restitution disbursements be delayed beyond 180 days from the date the payment is received by the probation department.

(c) In counties or cities and counties where road camps, farms, or other public work is available the court may place the probationer in the road camp, farm, or other public work instead of in jail. In this case, Section 25359 of the Government Code shall apply to probation and the court shall have the same power to require adult probationers to work, as prisoners confined in the county jail are required to work, at public work. Each county board of supervisors may fix the scale of compensation of the adult probationers in that county.

(d) In all cases of probation the court may require as a condition of probation that the probationer go to work and earn money for the support of his or her dependents or to pay any fine imposed or reparation condition, to keep an account of his or her earnings, to

report them to the probation officer and apply those earnings as directed by the court.

(e) The court shall also consider whether the defendant as a condition of probation shall make restitution to a public agency for the costs of an emergency response pursuant to Article 8 (commencing with Section 53150) of Chapter 1 of Part 1 of Division 2 of the Government Code.

(f) In all felony cases in which, as a condition of probation, a judge of the superior court sitting by authority of law elsewhere than at the county seat requires a convicted person to serve his or her sentence at intermittent periods the sentence may be served on the order of the judge at the city jail nearest to the place at which the court is sitting, and the cost of his or her maintenance shall be a county charge.

(g) (1) The court and prosecuting attorney shall consider whether any defendant who has been convicted of a nonviolent or nonserious offense and ordered to participate in community service as a condition of probation shall be required to engage in the removal of graffiti in the performance of the community service. For the purpose of this subdivision, a nonserious offense shall not include the following:

(A) Offenses in violation of the Dangerous Weapons' Control Law (Chapter 1 (commencing with Section 12000) of Title 2 of Part 4).

(B) Offenses involving the use of a dangerous or deadly weapon, including all violations of Section 417.

(C) Offenses involving the use or attempted use of violence against the person of another or involving injury to a victim.

(D) Offenses involving annoying or molesting children.

(2) Notwithstanding subparagraph (A) of paragraph (1), any person who violates Section 12101 shall be ordered to perform not less than 100 hours and not more than 500 hours of community service as a condition of probation.

(3) The court and the prosecuting attorney need not consider a defendant pursuant to paragraph (1) if the following circumstances exist:

(A) The defendant was convicted of any offense set forth in subdivision (c) of Section 667.5 or subdivision (c) of Section 1192.7.

(B) The judge believes that the public safety may be endangered if the person is ordered to do community service or the judge believes that the facts or circumstances or facts and circumstances call for imposition of a more substantial penalty.

(h) The probation officer or his or her designated representative shall consider whether any defendant who has been convicted of a nonviolent and nonserious offense and ordered to participate in community service as a condition of probation shall be required to engage in the performance of house repairs or yard services for senior citizens and the performance of repairs to senior centers through

contact with local senior service organizations in the performance of the community service.

(i) Upon conviction of any offense involving child abuse or neglect, the court may require, in addition to any or all of the above-mentioned terms of imprisonment, fine, and other reasonable conditions, that the defendant shall participate in counseling or education programs, or both, including, but not limited to, parent education or parenting programs operated by community colleges, school districts, other public agencies, or private agencies.

(j) The court may impose and require any or all of the above-mentioned terms of imprisonment, fine, and conditions, and other reasonable conditions, as it may determine are fitting and proper to the end that justice may be done, that amends may be made to society for the breach of the law, for any injury done to any person resulting from that breach, and generally and specifically for the reformation and rehabilitation of the probationer, and that should the probationer violate any of the terms or conditions imposed by the court in the matter, it shall have authority to modify and change any and all the terms and conditions and to reimprison the probationer in the county jail within the limitations of the penalty of the public offense involved. Upon the defendant being released from the county jail under the terms of probation as originally granted or any modification subsequently made, and in all cases where confinement in a county jail has not been a condition of the grant of probation, the court shall place the defendant or probationer in and under the charge of the probation officer of the court, for the period or term fixed for probation. However, upon the payment of any fine imposed and the fulfillment of all conditions of probation, probation shall cease at the end of the term of probation, or sooner, in the event of modification. In counties and cities and counties in which there are facilities for taking fingerprints, those of each probationer shall be taken and a record of them kept and preserved.

(k) Notwithstanding any other provisions of law to the contrary, except as provided in Section 13967, as operative on or before September 28, 1994, of the Government Code and Section 13967.5 of the Government Code and Sections 1202.4, 1463.16, paragraph (1) of subdivision (a) of Section 1463.18, and Section 1464, and Section 1203.04, as operative on or before August 2, 1995, all fines collected by a county probation officer in any of the courts of this state, as a condition of the granting of probation or as a part of the terms of probation, shall be paid into the county treasury and placed in the general fund for the use and benefit of the county.

(*l*) If the court orders restitution to be made to the victim, the board of supervisors may add a fee to cover the actual administrative cost of collecting restitution but not to exceed 10 percent of the total amount ordered to be paid. The fees shall be paid into the general fund of the county treasury for the use and benefit of the county.

SEC. 393.4. Section 1203.1 of the Penal Code is amended to read:

1203.1. (a) The court, or judge thereof, in the order granting probation, may suspend the imposing or the execution of the sentence and may direct that the suspension may continue for a period of time not exceeding the maximum possible term of the sentence, except as hereinafter set forth, and upon those terms and conditions as it shall determine. The court, or judge thereof, in the order granting probation and as a condition thereof, may imprison the defendant in a county jail for a period not exceeding the maximum time fixed by law in the case.

However, where the maximum possible term of the sentence is five years or less, then the period of suspension of imposition or execution of sentence may, in the discretion of the court, continue for not over five years. The following shall apply to this subdivision:

(1) The court may fine the defendant in a sum not to exceed the maximum fine provided by law in the case.

(2) The court may, in connection with granting probation, impose either imprisonment in a county jail or a fine, both, or neither.

(3) The court shall provide for restitution in proper cases.

(4) The court may require bonds for the faithful observance and performance of any or all of the conditions of probation.

(b) The court shall consider whether the defendant as a condition of probation shall make restitution to the victim or the Restitution Fund. Any restitution payment received by a probation department in the form of cash or money order shall be forwarded to the victim within 30 days from the date the payment is received by the department. Any restitution payment received by a probation department in the form of a check or draft shall be forwarded to the victim within 45 days from the date the payment is received by the department, provided, that payment need not be forwarded to a victim until 180 days from the date the first payment is received, if the restitution payments for that victim received by the probation department total less than fifty dollars ($50). In cases where the court has ordered the defendant to pay restitution to multiple victims and where the administrative cost of disbursing restitution payments to multiple victims involves a significant cost, any restitution payment received by a probation department shall be forwarded to multiple victims when it is cost-effective to do so, but in no event shall restitution disbursements be delayed beyond 180 days from the date the payment is received by the probation department.

(c) In counties or cities and counties where road camps, farms, or other public work is available the court may place the probationer in the road camp, farm, or other public work instead of in jail. In this case, Section 25359 of the Government Code shall apply to probation and the court shall have the same power to require adult probationers to work, as prisoners confined in the county jail are required to work, at public work. Each county board of supervisors may fix the scale of compensation of the adult probationers in that county.

(d) In all cases of probation the court may require as a condition of probation that the probationer go to work and earn money for the support of his or her dependents or to pay any fine imposed or reparation condition, to keep an account of his or her earnings, to report them to the probation officer and apply those earnings as directed by the court.

(e) The court shall also consider whether the defendant as a condition of probation shall make restitution to a public agency for the costs of an emergency response pursuant to Article 8 (commencing with Section 53150) of Chapter 1 of Part 1 of Division 2 of the Government Code.

(f) In all felony cases in which, as a condition of probation, a judge of the superior court sitting by authority of law elsewhere than at the county seat requires a convicted person to serve his or her sentence at intermittent periods the sentence may be served on the order of the judge at the city jail nearest to the place at which the court is sitting, and the cost of his or her maintenance shall be a county charge.

(g) (1) The court and prosecuting attorney shall consider whether any defendant who has been convicted of a nonviolent or nonserious offense and ordered to participate in community service as a condition of probation shall be required to engage in the removal of graffiti in the performance of the community service. For the purpose of this subdivision, a nonserious offense shall not include the following:

(A) Offenses in violation of the Dangerous Weapons' Control Law (Chapter 1 (commencing with Section 12000) of Title 2 of Part 4).

(B) Offenses involving the use of a dangerous or deadly weapon, including all violations of Section 417.

(C) Offenses involving the use or attempted use of violence against the person of another or involving injury to a victim.

(D) Offenses involving annoying or molesting children.

(2) Notwithstanding subparagraph (A) of paragraph (1), any person who violates Section 12101 shall be ordered to perform not less than 100 hours and not more than 500 hours of community service as a condition of probation.

(3) The court and the prosecuting attorney need not consider a defendant pursuant to paragraph (1) if the following circumstances exist:

(A) The defendant was convicted of any offense set forth in subdivision (c) of Section 667.5 or subdivision (c) of Section 1192.7.

(B) The judge believes that the public safety may be endangered if the person is ordered to do community service or the judge believes that the facts or circumstances or facts and circumstances call for imposition of a more substantial penalty.

(h) The probation officer or his or her designated representative shall consider whether any defendant who has been convicted of a nonviolent and nonserious offense and ordered to participate in

community service as a condition of probation shall be required to engage in the performance of house repairs or yard services for senior citizens and the performance of repairs to senior centers through contact with local senior service organizations in the performance of the community service.

(i) (1) Upon conviction of any offense involving child abuse or neglect, the court may require, in addition to any or all of the above-mentioned terms of imprisonment, fine, and other reasonable conditions, that the defendant shall participate in counseling or education programs, or both, including, but not limited to, parent education or parenting programs operated by community colleges, school districts, other public agencies, or private agencies.

(2) Upon conviction of any sex offense subjecting the defendant to the registration requirements of Section 290, the court may order as a condition of probation, at the request of the victim or in the court's discretion, that the defendant stay away from the victim and the victim's residence or place of employment, and that the defendant have no contact with the victim in person, by telephone or electronic means, or by mail.

(j) The court may impose and require any or all of the above-mentioned terms of imprisonment, fine, and conditions, and other reasonable conditions, as it may determine are fitting and proper to the end that justice may be done, that amends may be made to society for the breach of the law, for any injury done to any person resulting from that breach, and generally and specifically for the reformation and rehabilitation of the probationer, and that should the probationer violate any of the terms or conditions imposed by the court in the matter, it shall have authority to modify and change any and all the terms and conditions and to reimprison the probationer in the county jail within the limitations of the penalty of the public offense involved. Upon the defendant being released from the county jail under the terms of probation as originally granted or any modification subsequently made, and in all cases where confinement in a county jail has not been a condition of the grant of probation, the court shall place the defendant or probationer in and under the charge of the probation officer of the court, for the period or term fixed for probation. However, upon the payment of any fine imposed and the fulfillment of all conditions of probation, probation shall cease at the end of the term of probation, or sooner, in the event of modification. In counties and cities and counties in which there are facilities for taking fingerprints, those of each probationer shall be taken and a record of them kept and preserved.

(k) Notwithstanding any other provisions of law to the contrary, except as provided in Section 13967, as operative on or before September 28, 1994, of the Government Code and Section 13967.5 of the Government Code and Sections 1202.4, 1463.16, paragraph (1) of subdivision (a) of Section 1463.18, and Section 1464, and Section 1203.04, as operative on or before August 2, 1995, all fines collected

by a county probation officer in any of the courts of this state, as a condition of the granting of probation or as a part of the terms of probation, shall be paid into the county treasury and placed in the general fund for the use and benefit of the county.

(*l*) If the court orders restitution to be made to the victim, the board of supervisors may add a fee to cover the actual administrative cost of collecting restitution but not to exceed 10 percent of the total amount ordered to be paid. The fees shall be paid into the general fund of the county treasury for the use and benefit of the county.

SEC. 393.5. Section 1203.1 of the Penal Code is amended to read:

1203.1. (a) The court, or judge thereof, in the order granting probation, may suspend the imposing or the execution of the sentence and may direct that the suspension may continue for a period of time not exceeding the maximum possible term of the sentence, except as hereinafter set forth, and upon those terms and conditions as it shall determine. The court, or judge thereof, in the order granting probation and as a condition thereof, may imprison the defendant in a county jail for a period not exceeding the maximum time fixed by law in the case.

However, where the maximum possible term of the sentence is five years or less, then the period of suspension of imposition or execution of sentence may, in the discretion of the court, continue for not over five years. The following shall apply to this subdivision:

(1) The court may fine the defendant in a sum not to exceed the maximum fine provided by law in the case.

(2) The court may, in connection with granting probation, impose either imprisonment in a county jail or a fine, both, or neither.

(3) The court shall provide for restitution in proper cases. The restitution order shall be fully enforceable as a civil judgment forthwith and in accordance with Section 1202.4 of the Penal Code.

(4) The court may require bonds for the faithful observance and performance of any or all of the conditions of probation.

(b) The court shall consider whether the defendant as a condition of probation shall make restitution to the victim or the Restitution Fund. Any restitution payment received by a probation department in the form of cash or money order shall be forwarded to the victim within 30 days from the date the payment is received by the department. Any restitution payment received by a probation department in the form of a check or draft shall be forwarded to the victim within 45 days from the date the payment is received by the department, provided, that payment need not be forwarded to a victim until 180 days from the date the first payment is received, if the restitution payments for that victim received by the probation department total less than fifty dollars ($50). In cases where the court has ordered the defendant to pay restitution to multiple victims and where the administrative cost of disbursing restitution payments to multiple victims involves a significant cost, any restitution payment received by a probation department shall be forwarded to multiple

victims when it is cost-effective to do so, but in no event shall restitution disbursements be delayed beyond 180 days from the date the payment is received by the probation department.

(c) In counties or cities and counties where road camps, farms, or other public work is available the court may place the probationer in the road camp, farm, or other public work instead of in jail. In this case, Section 25359 of the Government Code shall apply to probation and the court shall have the same power to require adult probationers to work, as prisoners confined in the county jail are required to work, at public work. Each county board of supervisors may fix the scale of compensation of the adult probationers in that county.

(d) In all cases of probation the court may require as a condition of probation that the probationer go to work and earn money for the support of his or her dependents or to pay any fine imposed or reparation condition, to keep an account of his or her earnings, to report them to the probation officer and apply those earnings as directed by the court.

(e) The court shall also consider whether the defendant as a condition of probation shall make restitution to a public agency for the costs of an emergency response pursuant to Article 8 (commencing with Section 53150) of Chapter 1 of Part 1 of Division 2 of the Government Code.

(f) In all felony cases in which, as a condition of probation, a judge of the superior court sitting by authority of law elsewhere than at the county seat requires a convicted person to serve his or her sentence at intermittent periods the sentence may be served on the order of the judge at the city jail nearest to the place at which the court is sitting, and the cost of his or her maintenance shall be a county charge.

(g) (1) The court and prosecuting attorney shall consider whether any defendant who has been convicted of a nonviolent or nonserious offense and ordered to participate in community service as a condition of probation shall be required to engage in the removal of graffiti in the performance of the community service. For the purpose of this subdivision, a nonserious offense shall not include the following:

(A) Offenses in violation of the Dangerous Weapons' Control Law (Chapter 1 (commencing with Section 12000) of Title 2 of Part 4).

(B) Offenses involving the use of a dangerous or deadly weapon, including all violations of Section 417.

(C) Offenses involving the use or attempted use of violence against the person of another or involving injury to a victim.

(D) Offenses involving annoying or molesting children.

(2) Notwithstanding subparagraph (A) of paragraph (1), any person who violates Section 12101 shall be ordered to perform not less than 100 hours and not more than 500 hours of community service as a condition of probation.

(3) The court and the prosecuting attorney need not consider a defendant pursuant to paragraph (1) if the following circumstances exist:

(A) The defendant was convicted of any offense set forth in subdivision (c) of Section 667.5 or subdivision (c) of Section 1192.7.

(B) The judge believes that the public safety may be endangered if the person is ordered to do community service or the judge believes that the facts or circumstances or facts and circumstances call for imposition of a more substantial penalty.

(h) The probation officer or his or her designated representative shall consider whether any defendant who has been convicted of a nonviolent and nonserious offense and ordered to participate in community service as a condition of probation shall be required to engage in the performance of house repairs or yard services for senior citizens and the performance of repairs to senior centers through contact with local senior service organizations in the performance of the community service.

(i) (1) Upon conviction of any offense involving child abuse or neglect, the court may require, in addition to any or all of the above-mentioned terms of imprisonment, fine, and other reasonable conditions, that the defendant shall participate in counseling or education programs, or both, including, but not limited to, parent education or parenting programs operated by community colleges, school districts, other public agencies, or private agencies.

(2) Upon conviction of any sex offense subjecting the defendant to the registration requirements of Section 290, the court may order as a condition of probation, at the request of the victim or in the court's discretion, that the defendant stay away from the victim and the victim's residence or place of employment, and that the defendant have no contact with the victim in person, by telephone or electronic means, or by mail.

(j) The court may impose and require any or all of the above-mentioned terms of imprisonment, fine, and conditions, and other reasonable conditions, as it may determine are fitting and proper to the end that justice may be done, that amends may be made to society for the breach of the law, for any injury done to any person resulting from that breach, and generally and specifically for the reformation and rehabilitation of the probationer, and that should the probationer violate any of the terms or conditions imposed by the court in the matter, it shall have authority to modify and change any and all the terms and conditions and to reimprison the probationer in the county jail within the limitations of the penalty of the public offense involved. Upon the defendant being released from the county jail under the terms of probation as originally granted or any modification subsequently made, and in all cases where confinement in a county jail has not been a condition of the grant of probation, the court shall place the defendant or probationer in and under the charge of the probation officer of the court, for the period or term

fixed for probation. However, upon the payment of any fine imposed and the fulfillment of all conditions of probation, probation shall cease at the end of the term of probation, or sooner, in the event of modification. In counties and cities and counties in which there are facilities for taking fingerprints, those of each probationer shall be taken and a record of them kept and preserved.

(k) Notwithstanding any other provisions of law to the contrary, except as provided in Section 13967, as operative on or before September 28, 1994, of the Government Code and Section 13967.5 of the Government Code and Sections 1202.4, 1463.16, paragraph (1) of subdivision (a) of Section 1463.18, and Section 1464, and Section 1203.04, as operative on or before August 2, 1995, all fines collected by a county probation officer in any of the courts of this state, as a condition of the granting of probation or as a part of the terms of probation, shall be paid into the county treasury and placed in the general fund for the use and benefit of the county.

(*l*) If the court orders restitution to be made to the victim, the board of supervisors may add a fee to cover the actual administrative cost of collecting restitution but not to exceed 10 percent of the total amount ordered to be paid. The fees shall be paid into the general fund of the county treasury for the use and benefit of the county.

SEC. 394. Section 1203.1c of the Penal Code is amended to read:

1203.1c. (a) In any case in which a defendant is convicted of an offense and is ordered to serve a period of confinement in a county jail, city jail, or other local detention facility as a term of probation or a conditional sentence, the court may, after a hearing, make a determination of the ability of the defendant to pay all or a portion of the reasonable costs of such incarceration, including incarceration pending disposition of the case. The reasonable cost of such incarceration shall not exceed the amount determined by the board of supervisors, with respect to the county jail, and by the city council, with respect to the city jail, to be the actual average cost thereof on a per-day basis. The court may, in its discretion, hold additional hearings during the probationary period. The court may, in its discretion before such hearing, order the defendant to file a statement setting forth his or her assets, liability and income, under penalty of perjury, and may order the defendant to appear before a county officer designated by the board of supervisors to make an inquiry into the ability of the defendant to pay all or a portion of such costs. At the hearing, the defendant shall be entitled to have the opportunity to be heard in person or to be represented by counsel, to present witnesses and other evidence, and to confront and cross-examine adverse witnesses. A defendant represented by counsel appointed by the court in the criminal proceedings shall be entitled to such representation at any hearing held pursuant to this section. If the court determines that the defendant has the ability to pay all or a part of the costs, the court may set the amount to be reimbursed and order the defendant to pay that sum to the county,

or to the city with respect to incarceration in the city jail, in the manner in which the court believes reasonable and compatible with the defendant's financial ability. Execution may be issued on the order in the same manner as on a judgment in a civil action. The order to pay all or part of the costs shall not be enforced by contempt.

If practicable, the court shall order payments to be made on a monthly basis and the payments shall be made payable to the county officer designated by the board of supervisors, or to a city officer designated by the city council with respect to incarceration in the city jail.

A payment schedule for reimbursement of the costs of incarceration pursuant to this section based upon income shall be developed by the county officer designated by the board of supervisors, or by the city council with respect to incarceration in the city jail, and approved by the presiding judges of the municipal and superior courts in the county.

(b) "Ability to pay" means the overall capability of the defendant to reimburse the costs, or a portion of the costs, of incarceration and includes, but is not limited to, the defendant's:

(1) Present financial obligations, including family support obligations, and fines, penalties and other obligations to the court.

(2) Reasonably discernible future financial position. In no event shall the court consider a period of more than one year from the date of the hearing for purposes of determining reasonable discernible future position.

(3) Likelihood that the defendant shall be able to obtain employment within the one-year period from the date of the hearing.

(4) Any other factor or factors which may bear upon the defendant's financial ability to reimburse the county or city for the costs.

(c) All sums paid by a defendant pursuant to this section shall be deposited in the general fund of the county or city.

(d) This section shall be operative in a county upon the adoption of an ordinance to that effect by the board of supervisors, and shall be operative in a city upon the adoption of an ordinance to that effect by the city council. Such ordinance shall include a designation of the officer responsible for collection of moneys ordered pursuant to this section and shall include a determination, to be reviewed annually, of the average per-day costs of incarceration in the county jail, city jail, or other local detention facility.

SEC. 395. 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.

SEC. 395.5. 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. 396. The heading of Title 9 (commencing with Section 1235) of Part 2 of the Penal Code is amended to read:

TITLE 9. APPEALS IN FELONY CASES

SEC. 397. Section 1235 of the Penal Code is amended to read:

1235. (a) Either party to a felony case may appeal on questions of law alone, as prescribed in this title and in rules adopted by the Judicial Council. The provisions of this title apply only to such appeals.

(b) An appeal from the judgment or appealable order in a felony case is to the court of appeal for the district in which the court from which the appeal is taken is located.

SEC. 398. Section 1269 of the Penal Code is amended to read:

1269. The taking of bail consists in the acceptance, by a competent court or magistrate, of the undertaking of sufficient bail for the appearance of the defendant, according to the terms of the undertaking, or that the bail will pay to the people of this state a specified sum. Upon filing, the clerk shall enter in the register of actions the date and amounts of such bond and the name or names of the surety or sureties thereon. In the event of the loss or destruction of such bond, such entries so made shall be prima facie evidence of the due execution of such bond as required by law.

Whenever any bail bond has been deposited in any criminal action or proceeding in a municipal or superior court or in any proceeding in habeas corpus in a superior court, and it is made to appear to the satisfaction of the court by affidavit or by testimony in open court that more than three years have elapsed since the exoneration or release of said bail, the court must direct that such bond be destroyed.

SEC. 399. Section 1269b of the Penal Code is amended to read:

1269b. (a) The officer in charge of a jail where an arrested person is held in custody, an officer of a sheriff's department or police department of a city who is in charge of a jail or employed at a fixed police or sheriff's facility and is acting under an agreement with the agency which keeps the jail wherein an arrested person is held in custody, an employee of a sheriff's department or police department of a city who is assigned by such department to collect bail, the clerk of the municipal court of the judicial district in which the offense was alleged to have been committed, and the clerk of the superior court in which the case against the defendant is pending may approve and accept bail in the amount fixed by the warrant of arrest, schedule of bail, or order admitting to bail in cash or surety bond executed by a certified, admitted surety insurer as provided in the Insurance Code, to issue and sign an order for the release of the arrested person, and to set a time and place for the appearance of the arrested person before the appropriate court and give notice thereof.

(b) If a defendant has appeared before a judge of the court on the charge contained in the complaint, indictment, or information, the bail shall be in the amount fixed by the judge at the time of the appearance; if that appearance has not been made, the bail shall be in the amount fixed in the warrant of arrest or, if no warrant of arrest has been issued, the amount of bail shall be pursuant to the uniform countywide schedule of bail for the county in which the defendant is required to appear, previously fixed and approved as provided in subdivisions (c) and (d).

(c) It is the duty of the superior and municipal court judges in each county to prepare, adopt, and annually revise, by a majority vote, at a meeting called by the presiding judge of the superior court of the county, a uniform countywide schedule of bail for all bailable felony offenses.

In adopting a uniform countywide schedule of bail for all bailable offenses the judges shall consider the seriousness of the offense

charged. In considering the seriousness of the offense charged the judges shall assign an additional amount of required bail for each aggravating or enhancing factor chargeable in the complaint, including, but not limited to, additional bail for charges alleging facts which would bring a person within any of the following sections: Section 667.5, 667.51, 667.6, 667.8, 667.85, 667.9, 667.10, 12022, 12022.1, 12022.2, 12022.3, 12022.4, 12022.5, 12022.6, 12022.7, 12022.8, or 12022.9 of the Penal Code, or Section 11356.5, 11370.2, or 11370.4 of the Health and Safety Code.

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 shall assign an additional amount of required bail for offenses involving large quantities of controlled substances.

(d) The municipal court judges in each county, at a meeting called by the presiding judge of the municipal court at each county seat, or the superior court judges in each county in which there is no municipal court, at a meeting called by the presiding judge of the superior court, shall prepare, adopt, and annually revise, by a majority vote, a uniform, countywide schedule of bail for all misdemeanor and infraction offenses except Vehicle Code infractions. The penalty schedule for infraction violations of the Vehicle Code shall be established by the Judicial Council in accordance with Section 40310 of the Vehicle Code.

(e) Each countywide bail schedule shall contain a list of the offenses and the amounts of bail applicable thereto as the judges determine to be appropriate. If the schedules do not list all offenses specifically, they shall contain a general clause for designated amounts of bail as the judges of the county determine to be appropriate for all the offenses not specifically listed in the schedules. A copy of the countywide bail schedule shall be sent to the officer in charge of the county jail, to the officer in charge of each city jail within the county, to each superior and municipal court judge and commissioner in the county, and to the Judicial Council.

(f) Upon posting bail the defendant or arrested person shall be discharged from custody as to the offense on which the bail is posted.

All money and surety bonds so deposited with an officer authorized to receive bail shall be transmitted immediately to the judge or clerk of the court by which the order was made or warrant issued or bail schedule fixed. If, in the case of felonies, an indictment is filed, the judge or clerk of the court shall transmit all of the money and surety bonds to the county clerk.

(g) If a defendant or arrested person so released fails to appear at the time and in the court so ordered upon his or her release from custody, Sections 1305 and 1306 apply.

SEC. 399.5. Section 1269b of the Penal Code is amended to read:

1269b. (a) The officer in charge of a jail where an arrested person is held in custody, an officer of a sheriff's department or police

department of a city who is in charge of a jail or employed at a fixed police or sheriff's facility and is acting under an agreement with the agency which keeps the jail wherein an arrested person is held in custody, an employee of a sheriff's department or police department of a city who is assigned by such department to collect bail, the clerk of the municipal court of the judicial district in which the offense was alleged to have been committed, and the clerk of the superior court in which the case against the defendant is pending may approve and accept bail in the amount fixed by the warrant of arrest, schedule of bail, or order admitting to bail in cash or surety bond executed by a certified, admitted surety insurer as provided in the Insurance Code, to issue and sign an order for the release of the arrested person, and to set a time and place for the appearance of the arrested person before the appropriate court and give notice thereof.

(b) If a defendant has appeared before a judge of the court on the charge contained in the complaint, indictment, or information, the bail shall be in the amount fixed by the judge at the time of the appearance; if that appearance has not been made, the bail shall be in the amount fixed in the warrant of arrest or, if no warrant of arrest has been issued, the amount of bail shall be pursuant to the uniform countywide schedule of bail for the county in which the defendant is required to appear, previously fixed and approved as provided in subdivisions (c) and (d).

(c) It is the duty of the superior and municipal court judges in each county to prepare, adopt, and annually revise, by a majority vote, at a meeting called by the presiding judge of the superior court of the county, a uniform countywide schedule of bail for all bailable felony offenses.

In adopting a uniform countywide schedule of bail for all bailable offenses the judges shall consider the seriousness of the offense charged. In considering the seriousness of the offense charged the judges shall assign an additional amount of required bail for each aggravating or enhancing factor chargeable in the complaint, including, but not limited to, additional bail for charges alleging facts which would bring a person within any of the following sections: Section 667.5, 667.51, 667.6, 667.8, 667.85, 667.9, 667.10, 12022, 12022.1, 12022.2, 12022.3, 12022.4, 12022.5, 12022.53, 12022.6, 12022.7, 12022.8, or 12022.9 of the Penal Code, or Section 11356.5, 11370.2, or 11370.4 of the Health and Safety Code.

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 shall assign an additional amount of required bail for offenses involving large quantities of controlled substances.

(d) The municipal court judges in each county, at a meeting called by the presiding judge of the municipal court at each county seat, or the superior court judges in each county in which there is no municipal court, at a meeting called by the presiding judge of the

superior court, shall prepare, adopt, and annually revise, by a majority vote, a uniform, countywide schedule of bail for all misdemeanor and infraction offenses except Vehicle Code infractions. The penalty schedule for infraction violations of the Vehicle Code shall be established by the Judicial Council in accordance with Section 40310 of the Vehicle Code.

(e) Each countywide bail schedule shall contain a list of the offenses and the amounts of bail applicable thereto as the judges determine to be appropriate. If the schedules do not list all offenses specifically, they shall contain a general clause for designated amounts of bail as the judges of the county determine to be appropriate for all the offenses not specifically listed in the schedules. A copy of the countywide bail schedule shall be sent to the officer in charge of the county jail, to the officer in charge of each city jail within the county, to each superior and municipal court judge and commissioner in the county, and to the Judicial Council.

(f) Upon posting bail the defendant or arrested person shall be discharged from custody as to the offense on which the bail is posted.

All money and surety bonds so deposited with an officer authorized to receive bail shall be transmitted immediately to the judge or clerk of the court by which the order was made or warrant issued or bail schedule fixed. If, in the case of felonies, an indictment is filed, the judge or clerk of the court shall transmit all of the money and surety bonds to the county clerk.

(g) If a defendant or arrested person so released fails to appear at the time and in the court so ordered upon his or her release from custody, Sections 1305 and 1306 apply.

SEC. 400. Section 1278 of the Penal Code is amended to read:

1278. Bail is put in by a written undertaking, executed by two sufficient sureties (with or without the defendant, in the discretion of the magistrate), and acknowledged before the court or magistrate, in substantially the following form:

An order having been made on the _____ day of _____, 19____, by _____, a judge of the _____ Court of _____ County, that _____ be held to answer upon a charge of (stating briefly the nature of the offense), upon which he or she has been admitted to bail in the sum of _____ dollars ($_____); we, _____ and _____, of _____ (stating their place of residence and occupation), hereby undertake that the above-named _____ will appear and answer any charge in any accusatory pleading based upon the acts supporting the charge above mentioned, in whatever court it may be prosecuted, and will at all times hold himself or herself amenable to the orders and process of the court, and if convicted, will appear for pronouncement of judgment or grant of probation, or if he or she fails to perform either of these conditions, that we will pay to the people of the State of California the sum of _____ dollars ($_____) (inserting the sum in which the defendant is admitted

to bail). If the forfeiture of this bond be ordered by the court, judgment may be summarily made and entered forthwith against the said (naming the sureties), and the defendant if he or she be a party to the bond, for the amount of their respective undertakings herein, as provided by Sections 1305 and 1306.

SEC. 401. Section 1281a of the Penal Code is amended to read:

1281a. A judge of any municipal court within the county, wherein a cause is pending against any person charged with a felony, may justify and approve bail in the said cause, and may execute an order for the release of the defendant which shall authorize the discharge of the defendant by any officer having said defendant in custody.

SEC. 402. Section 1309 of the Penal Code is repealed.

SEC. 403. Section 1327 of the Penal Code is amended to read:

1327. A subpoena authorized by Section 1326 shall be substantially in the following form:

The people of the State of California to A. B.:

You are commanded to appear before C. D., a judge of the _____ Court of _____ County, at (naming the place), on (stating the day and hour), as a witness in a criminal action prosecuted by the people of the State of California against E. F.

Given under my hand this _____ day of _____, A.D. 19_____. G. H., Judge of the _____ Court (or "J. K., District Attorney," or "J. K., District Attorney Investigator," or "D. E., Public Defender," or "D. E., Public Defender Investigator," or "F. G., Defense Counsel," or "By order of the court, L. M., Clerk," or as the case may be).

If books, papers, or documents are required, a direction to the following effect must be contained in the subpoena: "And you are required, also, to bring with you the following" (describing intelligibly the books, papers, or documents required).

SEC. 404. Section 1368.1 of the Penal Code is amended to read:

1368.1. (a) If the action is on a complaint charging a felony, proceedings to determine mental competence shall be held prior to the filing of an information unless the counsel for the defendant requests a preliminary examination under the provisions of Section 859b. At such preliminary examination, counsel for the defendant may (1) demur, (2) move to dismiss the complaint on the ground that there is not reasonable cause to believe that a felony has been committed and that the defendant is guilty thereof, or (3) make a motion under Section 1538.5.

(b) If the action is on a complaint charging a misdemeanor, counsel for the defendant may (1) demur, (2) move to dismiss the complaint on the ground that there is not reasonable cause to believe that a public offense has been committed and that the defendant is guilty thereof, or (3) make a motion under Section 1538.5.

(c) In ruling upon any demurrer or motion described in subdivision (a) or (b), the court may hear any matter which is capable of fair determination without the personal participation of the defendant.

(d) A demurrer or motion described in subdivision (a) or (b) shall be made in the court having jurisdiction over the complaint. The defendant shall not be certified until the demurrer or motion has been decided.

SEC. 405. Section 1382 of the Penal Code is amended to read:

1382. (a) The court, unless good cause to the contrary is shown, shall order the action to be dismissed in the following cases:

(1) When a person has been held to answer for a public offense and an information is not filed against that person within 15 days.

(2) In a felony case, when a defendant is not brought to trial within 60 days after the finding of the indictment, filing of the information, or reinstatement of criminal proceedings pursuant to Chapter 6 (commencing with Section 1367) of Title 10 of Part 2, or, in case the cause is to be tried again following a mistrial, an order granting a new trial from which an appeal is not taken, or an appeal from the superior court, within 60 days after the mistrial has been declared, after entry of the order granting the new trial, or after the filing of the remittitur in the trial court, or after the issuance of a writ or order which, in effect, grants a new trial, within 60 days after notice of the writ or order is filed in the trial court and served upon the prosecuting attorney, or within 90 days after notice of the writ or order is filed in the trial court and served upon the prosecuting attorney in any case where the district attorney chooses to resubmit the case for a preliminary examination after an appeal or the issuance of a writ reversing a judgment of conviction upon a plea of guilty prior to a preliminary hearing. However, an action shall not be dismissed under this paragraph if either of the following circumstances exist:

(A) The defendant enters a general waiver of the 60-day trial requirement. A general waiver of the 60-day trial requirement entitles the superior court to set or continue a trial date without the sanction of dismissal should the case fail to proceed on the date set for trial. If the defendant, after proper notice to all parties, later withdraws his or her waiver in the superior court, the defendant shall be brought to trial within 60 days of the date of that withdrawal. If a general time waiver is not expressly entered, subparagraph (B) shall apply.

(B) The defendant requests or consents to the setting of a trial date beyond the 60-day period. Whenever a case is set for trial beyond the 60-day period by request or consent, expressed or implied, of the defendant without a general waiver, the defendant shall be brought to trial on the date set for trial or within 10 days thereafter.

Whenever a case is set for trial after a defendant enters either a general waiver as to the 60-day trial requirement or requests or consents, expressed or implied, to the setting of a trial date beyond

the 60-day period pursuant to this paragraph, the court may not grant a motion of the defendant to vacate the date set for trial and to set an earlier trial date unless all parties are properly noticed and the court finds good cause for granting that motion.

(3) Regardless of when the complaint is filed, when a defendant in a misdemeanor or infraction case is not brought to trial within 30 days after he or she is arraigned or enters his or her plea, whichever occurs later, if the defendant is in custody at the time of arraignment or plea, whichever occurs later, or in all other cases, within 45 days after the defendant's arraignment or entry of the plea, whichever occurs later, or in case the cause is to be tried again following a mistrial, an order granting a new trial from which no appeal is taken, or an appeal from a judgment in a misdemeanor or infraction case, within 30 days after the mistrial has been declared, after entry of the order granting the new trial, or after the remittitur is filed in the trial court. However, an action shall not be dismissed under this subdivision if any of the following circumstances exist:

(A) The defendant enters a general waiver of the 30-day or 45-day trial requirement. A general waiver of the 30-day or 45-day trial requirement entitles the court to set or continue a trial date without the sanction of dismissal should the case fail to proceed on the date set for trial. If the defendant, after proper notice to all parties, later withdraws his or her waiver, the defendant shall be brought to trial within 30 days of the date of that withdrawal. If a general time waiver is not expressly entered, subparagraph (B) shall apply.

(B) The defendant requests or consents to the setting of a trial date beyond the 30-day or 45-day period. In the absence of an express general time waiver from the defendant, the court shall set a trial date. Whenever a case is set for trial beyond the 30-day or 45-day period by request or consent, expressed or implied, of the defendant without a general waiver, the defendant shall be brought to trial on the date set for trial or within 10 days thereafter.

(C) The defendant in a misdemeanor case has been ordered to appear on a case set for hearing prior to trial, but the defendant fails to appear on that date and a bench warrant is issued, or the case is not tried on the date set for trial because of the defendant's neglect or failure to appear, in which case the defendant shall be deemed to have been arraigned within the meaning of this subdivision on the date of his or her subsequent arraignment on a bench warrant or his or her submission to the court.

(b) Whenever a defendant has been ordered to appear in superior court on a felony case set for trial or set for a hearing prior to trial after being held to answer, if the defendant fails to appear on that date and a bench warrant is issued, the defendant shall be brought to trial within 60 days after the defendant next appears in the superior court unless a trial date previously had been set which is beyond that 60-day period.

(c) If the defendant is not represented by counsel, the defendant shall not be deemed under this section to have consented to the date for the defendant's trial unless the court has explained to the defendant his or her rights under this section and the effect of his or her consent.

SEC. 405.5. Section 1382 of the Penal Code is amended to read:

1382. (a) The court, unless good cause to the contrary is shown, shall order the action to be dismissed in the following cases:

(1) When a person has been held to answer for a public offense and an information is not filed against that person within 15 days.

(2) In a felony case, when a defendant is not brought to trial within 60 days of the defendant's arraignment in the superior court, or reinstatement of criminal proceedings pursuant to Chapter 6 (commencing with Section 1367) of Title 10 of Part 2, or, in case the cause is to be tried again following a mistrial, an order granting a new trial from which an appeal is not taken, or an appeal from the superior court, within 60 days after the mistrial has been declared, after entry of the order granting the new trial, or after the filing of the remittitur in the trial court, or after the issuance of a writ or order which, in effect, grants a new trial, within 60 days after notice of the writ or order is filed in the trial court and served upon the prosecuting attorney, or within 90 days after notice of the writ or order is filed in the trial court and served upon the prosecuting attorney in any case where the district attorney chooses to resubmit the case for a preliminary examination after an appeal or the issuance of a writ reversing a judgment of conviction upon a plea of guilty prior to a preliminary hearing. However, an action shall not be dismissed under this paragraph if either of the following circumstances exist:

(A) The defendant enters a general waiver of the 60-day trial requirement. A general waiver of the 60-day trial requirement entitles the superior court to set or continue a trial date without the sanction of dismissal should the case fail to proceed on the date set for trial. If the defendant, after proper notice to all parties, later withdraws his or her waiver in the superior court, the defendant shall be brought to trial within 60 days of the date of that withdrawal. If a general time waiver is not expressly entered, subparagraph (B) shall apply.

(B) The defendant requests or consents to the setting of a trial date beyond the 60-day period. Whenever a case is set for trial beyond the 60-day period by request or consent, expressed or implied, of the defendant without a general waiver, the defendant shall be brought to trial on the date set for trial or within 10 days thereafter.

Whenever a case is set for trial after a defendant enters either a general waiver as to the 60-day trial requirement or requests or consents, expressed or implied, to the setting of a trial date beyond the 60-day period pursuant to this paragraph, the court may not grant a motion of the defendant to vacate the date set for trial and to set

an earlier trial date unless all parties are properly noticed and the court finds good cause for granting that motion.

(3) Regardless of when the complaint is filed, when a defendant in a misdemeanor or infraction case is not brought to trial within 30 days after he or she is arraigned or enters his or her plea, whichever occurs later, if the defendant is in custody at the time of arraignment or plea, whichever occurs later, or in all other cases, within 45 days after the defendant's arraignment or entry of the plea, whichever occurs later, or in case the cause is to be tried again following a mistrial, an order granting a new trial from which no appeal is taken, or an appeal from a judgment in a misdemeanor or infraction case, within 30 days after the mistrial has been declared, after entry of the order granting the new trial, or after the remittitur is filed in the trial court. However, an action shall not be dismissed under this subdivision if any of the following circumstances exist:

(A) The defendant enters a general waiver of the 30-day or 45-day trial requirement. A general waiver of the 30-day or 45-day trial requirement entitles the inferior court to set or continue a trial date without the sanction of dismissal should the case fail to proceed on the date set for trial. If the defendant, after proper notice to all parties, later withdraws his or her waiver, the defendant shall be brought to trial within 30 days of the date of that withdrawal. If a general time waiver is not expressly entered, subparagraph (B) shall apply.

(B) The defendant requests or consents to the setting of a trial date beyond the 30-day or 45-day period. In the absence of an express general time waiver from the defendant, the court shall set a trial date. Whenever a case is set for trial beyond the 30-day or 45-day period by request or consent, expressed or implied, of the defendant without a general waiver, the defendant shall be brought to trial on the date set for trial or within 10 days thereafter.

(C) The defendant in a misdemeanor case has been ordered to appear on a case set for hearing prior to trial, but the defendant fails to appear on that date and a bench warrant is issued, or the case is not tried on the date set for trial because of the defendant's neglect or failure to appear, in which case the defendant shall be deemed to have been arraigned within the meaning of this subdivision on the date of his or her subsequent arraignment on a bench warrant or his or her submission to the court.

(b) Whenever a defendant has been ordered to appear in superior court on a felony case set for trial or set for a hearing prior to trial after being held to answer, if the defendant fails to appear on that date and a bench warrant is issued, the defendant shall be brought to trial within 60 days after the defendant next appears in the superior court unless a trial date previously had been set which is beyond that 60-day period.

(c) If the defendant is not represented by counsel, the defendant shall not be deemed under this section to have consented to the date

for the defendant's trial unless the court has explained to the defendant his or her rights under this section and the effect of his or her consent.

SEC. 406. Section 1424 of the Penal Code is amended to read:

1424. (a) (1) Notice of a motion to disqualify a district attorney from performing an authorized duty shall be served on the district attorney and the Attorney General at least 10 days before the motion is heard. The notice of motion shall set forth a statement of the facts relevant to the claimed disqualification and the legal authorities relied upon by the moving party. The Attorney General may appear at the hearing on the motion and may file with the court hearing the motion a written opinion on the disqualification issue. The motion may not be granted unless the evidence shows that a conflict of interest exists that would render it unlikely that the defendant would receive a fair trial. An order recusing the district attorney from any proceeding may be appealed by the district attorney or the Attorney General. The order recusing the district attorney shall be stayed pending any appeal authorized by this section.

(2) An appeal from an order of recusal from a case involving a charge punishable as a felony shall be made pursuant to Chapter 1 (commencing with Section 1235) of Title 9, regardless of the court in which the order is made. An appeal from an order of recusal in a misdemeanor case shall be made pursuant to Chapter 2 (commencing with Section 1466) of Title 11, regardless of the court in which the order is made.

(b) (1) Notice of a motion to disqualify a city attorney from performing an authorized duty involving a criminal matter shall be served on the city attorney and the district attorney at least 10 days before the motion is heard. The notice of motion shall set forth a statement of the facts relevant to the claimed disqualification and the legal authorities relied on by the moving party. The district attorney may appear at the hearing on the motion and may file with the court hearing the motion a written opinion on the disqualification issue. The motion may not be granted unless the evidence shows that a conflict of interest exists that would render it unlikely that the defendant would receive a fair trial.

(2) An order recusing the city attorney from a proceeding may be appealed by the city attorney or the district attorney. The order recusing the city attorney shall be stayed pending an appeal authorized by this section. An appeal from an order of disqualification in a misdemeanor case shall be made pursuant to Chapter 2 (commencing with Section 1466) of Title 11.

(c) Motions to disqualify the city attorney and the district attorney shall be separately made.

SEC. 406.5. Section 1424 of the Penal Code is amended to read:

1424. (a) (1) Notice of a motion to disqualify a district attorney from performing an authorized duty shall be served on the district attorney and the Attorney General at least 10 days before the motion

is heard. The notice of motion shall set forth a statement of the facts relevant to the claimed disqualification and the legal authorities relied upon by the moving party. The Attorney General may appear at the hearing on the motion and may file with the court hearing the motion a written opinion on the disqualification issue. The motion may not be granted unless the evidence shows that a conflict of interest exists that would render it unlikely that the defendant would receive a fair trial. An order recusing the district attorney from any proceeding may be reviewed by extraordinary writ or may be appealed by the district attorney or the Attorney General. The order recusing the district attorney shall be stayed pending any review authorized by this section.

(2) An appeal from an order of recusal or from a case involving a charge punishable as a felony shall be made pursuant to Chapter 1 (commencing with Section 1235) of Title 9, regardless of the court in which the order is made. An appeal from an order of recusal in a misdemeanor case shall be made pursuant to Chapter 2 (commencing with Section 1466) of Title 11, regardless of the court in which the order is made.

(b) (1) Notice of a motion to disqualify a city attorney from performing an authorized duty involving a criminal matter shall be served on the city attorney and the district attorney at least 10 days before the motion is heard. The notice of motion shall set forth a statement of the facts relevant to the claimed disqualification and the legal authorities relied on by the moving party. The district attorney may appear at the hearing on the motion and may file with the court hearing the motion a written opinion on the disqualification issue. The motion may not be granted unless the evidence shows that a conflict of interest exists that would render it unlikely that the defendant would receive a fair trial.

(2) An order recusing the city attorney from a proceeding may be appealed by the city attorney or the district attorney. The order recusing the city attorney shall be stayed pending an appeal authorized by this section. An appeal from an order of disqualification in a misdemeanor case shall be made pursuant to Chapter 2 (commencing with Section 1466) of Title 11.

(c) Motions to disqualify the city attorney and the district attorney shall be separately made.

SEC. 407. The heading of Title 11 (commencing with Section 1427) of Part 2 of the Penal Code is amended to read:

TITLE 11. PROCEEDINGS IN MISDEMEANOR AND INFRACTION CASES AND APPEALS FROM SUCH CASES

SEC. 408. The heading of Chapter 1 (commencing with Section 1427) of Title 11 of Part 2 of the Penal Code is amended to read:

CHAPTER 1. PROCEEDINGS IN MISDEMEANOR AND INFRACTION CASES

SEC. 409. Section 1427 of the Penal Code is amended to read:

1427. (a) When a complaint is presented to a judge in a misdemeanor or infraction case appearing to be triable in the judge's court, the judge must, if satisfied therefrom that the offense complained of has been committed and that there is reasonable ground to believe that the defendant has committed it, issue a warrant, for the arrest of the defendant.

(b) Such warrant of arrest and proceedings upon it shall be in conformity to the provisions of this code regarding warrants of arrest, and it may be in the following form:

County of _____

The people of the State of California, to any peace officer in this state:

Complaint upon oath having been this day made before me that the offense of _____ (designating it generally) has been committed and accusing _____ (name of defendant) thereof you are therefore commanded forthwith to arrest the above-named defendant and bring the defendant forthwith before the _____ Court of _____ (stating full title of court) at _____ (naming place).

Witness my hand and the seal of said court this _____ day of _____, 19____.

(Signed). _____

Judge of said court

If it appears that the offense complained of has been committed by a corporation, no warrant of arrest shall issue, but the judge must issue a summons substantially in the form prescribed in Section 1391. Such summons must be served at the time and in the manner designated in Section 1392 except that if the offense complained of is a violation of the Vehicle Code or a local ordinance adopted pursuant to the Vehicle Code, such summons may be served by deposit by the clerk of the court in the United States mail of an envelope enclosing the summons, which envelope shall be addressed to a person authorized to accept service of legal process on behalf of the defendant, and which envelope shall be mailed by registered mail or certified mail with a return receipt requested. Promptly upon such mailing, the clerk of the court shall execute a certificate of such mailing and place it in the file of the court for that case. At the time stated in the summons the corporation may appear by counsel and answer the complaint, except that in the case of misdemeanors arising from operation of motor vehicles, or of infractions arising from operation of motor vehicles, a corporation may appear by its president, vice president, secretary or managing agent for the purpose of entering

a plea of guilty. If it does not appear, a plea of not guilty shall be entered, and the same proceedings had therein as in other cases.

SEC. 410. Section 1428 of the Penal Code is amended to read:

1428. A docket must be kept by the clerk of each municipal court having jurisdiction of criminal actions or proceedings, in which must be entered the title of each criminal action or proceeding and under each title all the orders and proceedings in such action or proceeding. Wherever by any other section of this code made applicable to such courts an entry of any judgment, order or other proceeding in the minutes is required, an entry thereof in the docket shall be made and shall be deemed a sufficient entry in the minutes for all purposes.

SEC. 411. Section 1429 of the Penal Code is amended to read:

1429. In a misdemeanor case the plea of the defendant may be made by the defendant or by the defendant's counsel. If such defendant pleads guilty, the court may, before entering such plea or pronouncing judgment, examine witnesses to ascertain the gravity of the offense committed; and if it appears to the court that a higher offense has been committed than the offense charged in the complaint, the court may order the defendant to be committed or admitted to bail, to answer any indictment which may be found against the defendant by the grand jury, or any complaint which may be filed charging the defendant with such higher offense.

SEC. 412. Section 1429.5 of the Penal Code is amended to read:

1429.5. When a defendant pleads not guilty by reason of insanity to a misdemeanor charge in a municipal court, and also joins with it another plea or pleas, the defendant shall first be tried as if the defendant had entered such other plea or pleas only, and in such trial the defendant shall be conclusively presumed to have been sane at the time the offense is alleged to have been committed. If the defendant shall be found guilty, or if the defendant pleads only not guilty by reason of insanity, then the defendant shall be certified to the superior court of the county for prompt trial to determine the question whether the defendant was sane or insane at the time the offense was committed. The superior court shall proceed as provided in Sections 1026 and 1027. If the verdict or finding be that the defendant was sane at the time the offense was committed the superior court shall remand the defendant to the court from which the defendant was certified which court shall sentence the defendant as provided by law. If the verdict or finding be that the defendant was insane at the time the offense was committed the superior court shall proceed as provided in Section 1026.

SEC. 413. Section 1447 of the Penal Code is amended to read:

1447. When the defendant is acquitted in a misdemeanor or infraction case, if the court certifies in the minutes that the prosecution was malicious and without probable cause, the court may order the complainant to pay the costs of the action, or to give an undertaking to pay the costs within 30 days after the trial.

SEC. 414. Section 1449 of the Penal Code is amended to read:

1449. In a misdemeanor or infraction case, after a plea, finding, or verdict of guilty, or after a finding or verdict against the defendant on a plea of former conviction or acquittal, or once in jeopardy, the court shall appoint a time for pronouncing judgment which shall be not less than six hours, nor more than five days, after the verdict or plea of guilty, unless the defendant waives the postponement. The court may extend the time for not more than 10 days for the purpose of hearing or determining any motion for a new trial, or in arrest of judgment. The court also may extend the time for not more than 20 judicial days if probation is considered. Upon request of the defendant or the probation officer, that time may be further extended for not more than 90 additional days. In case of postponement, the court may hold the defendant to bail to appear for judgment. If, in the opinion of the court there is a reasonable ground for believing a defendant insane, the court may extend the time of pronouncing judgment and may commit the defendant to custody until the question of insanity has been heard and determined.

If the defendant is a veteran who was discharged from service for mental disability, upon his or her request, his or her case shall be referred to the probation officer, who shall secure a military medical history of the defendant and present it to the court together with a recommendation for or against probation.

SEC. 415. Section 1458 of the Penal Code is amended to read:

1458. The provisions of this code relative to bail are applicable to bail in misdemeanor or infraction cases. The defendant, at any time after arrest and before conviction, may be admitted to bail. The undertaking of bail in such a case shall be in substantially the following form:

A complaint having been filed on the _____ day of _____, 19____, in the _____ Court of _____ County of _____ (stating title and location of court) charging _____ (naming defendant) as defendant with the crime of _____ (designating it generally) and the defendant having been admitted to bail in the sum of _____ dollars ($_____) (stating amount);

We, _____ and _____, of _____ (stating their places of residence and occupation), hereby undertake that the above-named defendant will appear and answer any charge in any accusatory pleading based upon the acts supporting the complaint above mentioned and all duly authorized amendments thereof, in whatever court it may be prosecuted, and will at all times hold himself or herself amenable to the orders and process of the court, and, if convicted, will appear for pronouncement of judgment or grant of probation or if the defendant fails to perform either of these conditions, that we will pay to the people of the State of California the sum of _____ dollars ($_____) (inserting the sum in which the defendant is admitted to bail). If the forfeiture of this bond is ordered by the court, judgment may be summarily made and entered forthwith against the

said _____ (naming the sureties and the defendant if the defendant is a party to the bond) for the amount of their respective undertakings herein, as provided by Sections 1305 and 1306 of the California Penal Code.

SEC. 416. Section 1459 of the Penal Code is amended to read:

1459. Undertakings of bail filed by admitted surety insurers shall meet all other requirements of law and the obligation of the insurer shall be in the following form except to the extent a different form is otherwise provided by statute:

_____ (stating the title and the location of the court).

Defendant _____ (stating the name of the defendant) having been admitted to bail in the sum of _____ dollars ($_____) (stating the amount of bail fixed) and ordered to appear in the above-entitled court on _____, 19____ (stating the date for appearance in court), on _____ (stating only the word "misdemeanor" or the word "felony") charge/s;

Now, the _____ (stating the name of admitted surety insurer and state of incorporation) hereby undertakes that the above-named defendant will appear in the above-named court on the date above set forth to answer any charge in any accusatory pleading based upon the acts supporting the complaint filed against him/her and all duly authorized amendments thereof, in whatever court it may be prosecuted, and will at all times hold him/herself amenable to the orders and process of the court and, if convicted, will appear for pronouncement of judgment or grant of probation or if he/she fails to perform either of these conditions, that the _____ (stating the name of admitted surety insurer and state of incorporation) will pay to the people of the State of California the sum of _____ dollars ($_____) (stating the amount of the undertaking of the admitted surety insurer).

If the forfeiture of this bond be ordered by the court, judgment may be summarily made and entered forthwith against the said _____ (stating the name of admitted surety insurer and state of incorporation) for the amount of its undertaking herein, as provided by Sections 1305 and 1306 of the California Penal Code.

_____

(Stating the name of admitted surety insurer and state of incorporation),

(Signature)

By _____
Attorney−in−fact
(Corporate seal)

(Jurat of notary public or
other officer authorized
to administer oaths.)

SEC. 417. Section 1462 of the Penal Code is amended to read:

1462. (a) Each municipal court shall have jurisdiction in all criminal cases amounting to misdemeanor, where the offense charged was committed within the county in which the municipal court is established. Each municipal court shall have exclusive jurisdiction in all cases involving the violation of ordinances of cities or towns situated within the district in which the court is established.

(b) Each municipal court shall have jurisdiction in all noncapital criminal cases to receive a plea of guilty or nolo contendere, appoint a time for pronouncing judgment under Section 859a, pronounce judgment, and refer the case to the probation officer if eligible for probation.

(c) The superior courts shall have jurisdiction in all misdemeanor criminal cases to receive a plea of guilty or nolo contendere, appoint a time for pronouncing judgment, and pronounce judgment.

(d) The superior court in a county in which there is no municipal court has the jurisdiction provided in subdivisions (a) and (b).

SEC. 418. Section 1462.1 of the Penal Code is repealed.

SEC. 419. Section 1462.2 of the Penal Code is amended to read:

1462.2. Except as otherwise provided in the Vehicle Code, the proper court for the trial of criminal cases amounting to misdemeanor shall be determined as follows: Any municipal court, having jurisdiction of the subject matter of the case, established in the county within which the offense charged was committed, or the superior court in a county in which there is no municipal court, is the proper court for the trial of the case.

If an action or proceeding is commenced in a court having jurisdiction of the subject matter thereof other than the court herein designated as the proper court for the trial, the action may, notwithstanding, be tried in the court where commenced, unless the defendant, at the time of pleading, requests an order transferring the action or proceeding to the proper court. If after such request it appears that the action or proceeding was not commenced in the proper court, the court shall order the action or proceeding transferred to the proper court. The judge must, at the time of arraignment, inform the defendant of the right to be tried in the county wherein the offense was committed.

SEC. 420. Section 1463 of the Penal Code is amended to read:

1463. All fines and forfeitures imposed and collected for crimes shall be distributed in accordance with Section 1463.001.

The following definitions shall apply to terms used in this chapter:

(a) "Arrest" means any law enforcement action, including issuance of a notice to appear or notice of violation, which results in a criminal charge.

(b) "City" includes any city, city and county, district, including any enterprise special district, community service district, or community service area engaged in police 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 Police Protection and Public Safety, authority, or other local agency (other than a county) which employs persons authorized to make arrests or to issue notices to appear or notices of violation which may be filed in court.

(c) "City arrest" means an arrest by an employee of a city, or by a California Highway Patrol officer within the limits of a city.

(d) "County" means the county in which the arrest took place.

(e) "County arrest" means an arrest by a California Highway Patrol officer outside the limits of a city, or any arrest by a county officer or by any other state officer.

(f) "Court" means the superior or municipal court or a juvenile forum established under Section 257 of the Welfare and Institutions Code, in which the case arising from the arrest is filed.

(g) "Division of moneys" means an allocation of base fine proceeds between agencies as required by statute including, but not limited to, Sections 1463.003, 1463.9, 1463.23, 1463.26, and Sections 13001, 13002, and 13003 of the Fish and Game Code, and Section 11502 of the Health and Safety Code.

(h) "Offense" means any infraction, misdemeanor, or felony, and any act by a juvenile leading to an order to pay a financial sanction by reason of the act being defined as an infraction, misdemeanor, or felony, whether defined in this or any other code, except any parking offense as defined in subdivision (i).

(i) "Parking offense" means any offense charged pursuant to Article 3 (commencing with Section 40200) of Chapter 1 of Division 17 of the Vehicle Code, including registration and equipment offenses included on a notice of parking violation.

(j) "Penalty allocation" means the deposit of a specified part of moneys to offset designated processing costs, as provided by Section 1463.16 and by Section 68090.8 of the Government Code.

(k) "Total parking penalty" means the total sum to be collected for a parking offense, whether as fine, forfeiture of bail, or payment of penalty to the Department of Motor Vehicles. It may include the following components:

(1) The base parking penalty as established pursuant to Section 40203.5 of the Vehicle Code.

(2) The Department of Motor Vehicles (DMV) fees added upon the placement of a hold pursuant to Section 40220 of the Vehicle Code.

(3) The surcharges required by Section 76000 of the Government Code.

(4) The notice penalty added to the base parking penalty when a notice of delinquent parking violations is given.

(*l*) "Total fine or forfeiture" means the total sum to be collected upon a conviction, or the total amount of bail forfeited or deposited as cash bail subject to forfeiture. It may include, but is not limited to, the following components as specified for the particular offense:

(1) The "base fine" upon which the state penalty and additional county penalty is calculated.

(2) The "county penalty" required by Section 76000 of the Government Code.

(3) The "service charge" permitted by Section 853.7 of the Penal Code and Sections 40508.5 and 41103.5 of the Vehicle Code.

(4) The "special penalty" dedicated for blood alcohol analysis, alcohol program services, traumatic brain injury research, and similar purposes.

(5) The "state penalty" required by Section 1464.

SEC. 421. Section 1463.1 of the Penal Code is amended to read:

1463.1. Notwithstanding the provisions of Section 1463, any municipal court may elect, with prior approval of the county auditor, to deposit in a bank account pursuant to Section 53679 of the Government Code, all moneys deposited as bail with such court, or with the clerk thereof.

All moneys received and disbursed through such bank account shall be properly and uniformly accounted for under such procedures as the State Controller may deem necessary.

SEC. 422. Section 1463.22 of the Penal Code is amended to read:

1463.22. (a) Notwithstanding Section 1463, of the moneys deposited with the county treasurer pursuant to Section 1463, seventeen dollars and fifty cents ($17.50) for each conviction of a violation of Section 16028 of the Vehicle Code shall be deposited by the county treasurer in a special account and allocated to defray costs of municipal and superior courts incurred in administering Sections 16028, 16030, and 16031 of the Vehicle Code. Any moneys in the special account in excess of the amount required to defray those costs shall be redeposited and distributed by the county treasurer pursuant to Section 1463.

(b) Notwithstanding Section 1463, of the moneys deposited with the county treasurer pursuant to Section 1463, three dollars ($3) for each conviction for a violation of Section 16028 of the Vehicle Code shall be initially deposited by the county treasurer in a special account, and shall be transmitted once per month to the Controller for deposit in the Motor Vehicle Account in the State Transportation Fund. These moneys shall be available, when appropriated, to defray the administrative costs incurred by the Department of Motor Vehicles pursuant to Sections 16031, 16032, 16034, and 16035 of the Vehicle Code. It is the intent of this subdivision to provide sufficient

revenues to pay for all of the department's costs in administering those sections of the Vehicle Code.

(c) Notwithstanding Section 1463, of the moneys deposited with the county treasurer pursuant to Section 1463, ten dollars ($10) upon the conviction of, or upon the forfeiture of bail from, any person arrested or notified for a violation of Section 16028 of the Vehicle Code shall be deposited by the county treasurer in a special account and shall be transmitted monthly to the Controller for deposit in the General Fund.

SEC. 423. The heading of Chapter 2 (commencing with Section 1466) of Title 11 of Part 2 of the Penal Code is amended to read:

CHAPTER 2. APPEALS IN MISDEMEANOR AND INFRACTION CASES

SEC. 424. Section 1466 of the Penal Code is amended to read:

1466. An appeal may be taken from a judgment or order in an infraction or misdemeanor case, to the appellate division of the superior court of the county in which the court from which the appeal is taken is located, in the following cases:

(1) By the people:

(A) From an order recusing the district attorney or city attorney pursuant to Section 1424.

(B) From an order or judgment dismissing or otherwise terminating the action before the defendant has been placed in jeopardy or where the defendant has waived jeopardy.

(C) From a judgment for the defendant upon the sustaining of a demurrer.

(D) From an order granting a new trial.

(E) From an order arresting judgment.

(F) From any order made after judgment affecting the substantial rights of the people.

(G) From the imposition of an unlawful sentence, whether or not the court suspends the execution of sentence. As used in this subparagraph, "unlawful sentence" means the imposition of a sentence not authorized by law or the imposition of a sentence based upon an unlawful order of the court that strikes or otherwise modifies the effect of an enhancement or prior conviction. A defendant shall have the right to counsel in the people's appeal of an unlawful sentence under the same circumstances that he or she would have a right to counsel under subdivision (a) of Section 1238.

(H) Nothing in this section shall be construed to authorize an appeal from an order granting probation. Instead, the people may seek appellate review of any grant of probation, whether or not the court imposes sentence, by means of a petition for a writ of mandate or prohibition that is filed within 60 days after probation is granted. The review of any grant of probation shall include review of any order underlying the grant of probation.

(2) By the defendant:

(A) From a final judgment of conviction. A sentence, an order granting probation, a conviction in a case in which before final judgment the defendant is committed for insanity or is given an indeterminate commitment as a mentally disordered sex offender, or the conviction of a defendant committed for controlled substance addiction shall be deemed to be a final judgment within the meaning of this section. Upon appeal from a final judgment or an order granting probation the court may review any order denying a motion for a new trial.

(B) From any order made after judgment affecting his or her substantial rights.

SEC. 424.5. Section 1466 of the Penal Code is amended to read:

1466. An appeal may be taken from a judgment or order, in an infraction or misdemeanor case, to the appellate division of the superior court of the county in which the court from which the appeal is taken is located, in the following cases:

(1) By the people:

(A) From an order recusing the district attorney or city attorney pursuant to Section 1424.

(B) From an order or judgment dismissing or otherwise terminating all or any portion of the action, including such an order or judgment, entered after a verdict or finding of guilty or a verdict or judgment entered before the defendant has been placed in jeopardy or where the defendant has waived jeopardy.

(C) From sustaining a demurrer to any portion of the complaint or pleading.

(D) From an order granting a new trial.

(E) From an order arresting judgment.

(F) From any order made after judgment affecting the substantial rights of the people.

(G) From the imposition of an unlawful sentence, whether or not the court suspends the execution of sentence. As used in this subparagraph, "unlawful sentence" means the imposition of a sentence not authorized by law or the imposition of a sentence based upon an unlawful order of the court that strikes or otherwise modifies the effect of an enhancement or prior conviction. A defendant shall have the right to counsel in the people's appeal of an unlawful sentence under the same circumstances that he or she would have a right to counsel under subdivision (a) of Section 1238.

(H) Nothing in this section shall be construed to authorize an appeal from an order granting probation. Instead, the people may seek appellate review of any grant of probation, whether or not the court imposes sentence, by means of a petition for a writ of mandate or prohibition that is filed within 60 days after probation is granted. The review of any grant of probation shall include review of any order underlying the grant of probation.

(2) By the defendant:

(A) From a final judgment of conviction. A sentence, an order granting probation, a conviction in a case in which before final judgment the defendant is committed for insanity or is given an indeterminate commitment as a mentally disordered sex offender, or the conviction of a defendant committed for controlled substance addiction shall be deemed to be a final judgment within the meaning of this section. Upon appeal from a final judgment or an order granting probation the court may review any order denying a motion for a new trial.

(B) From any order made after judgment affecting his or her substantial rights.

SEC. 425. Section 1468 of the Penal Code is amended to read:

1468. Appeals to the appellate divisions of superior courts shall be taken, heard and determined, the decisions thereon shall be remitted to the courts from which the appeals are taken, and the records on such appeals shall be made up and filed in such time and manner as shall be prescribed in rules adopted by the Judicial Council.

SEC. 426. The heading of Chapter 3 (commencing with Section 1471) of Title 11 of Part 2 of the Penal Code is amended to read:

CHAPTER 3. TRANSFER OF MISDEMEANOR AND INFRACTION APPEALS

SEC. 427. Section 1471 of the Penal Code is amended to read:

1471. A court of appeal may order any case on appeal to a superior court in its district transferred to it for hearing and decision as provided by rules of the Judicial Council when the superior court certifies, or the court of appeal determines, that such transfer appears necessary to secure uniformity of decision or to settle important questions of law.

A court to which any such case is transferred shall have similar power to review any matter and make orders and judgments as the appellate division of the superior court by statute would have in such case, except as otherwise expressly provided.

SEC. 428. Section 1538.5 of the Penal Code is amended to read:

1538.5. (a) (1) A defendant may move for the return of property or to suppress as evidence any tangible or intangible thing obtained as a result of a search or seizure on either of the following grounds:

(A) The search or seizure without a warrant was unreasonable.

(B) The search or seizure with a warrant was unreasonable because any of the following apply:

(i) The warrant is insufficient on its face.

(ii) The property or evidence obtained is not that described in the warrant.

(iii) There was not probable cause for the issuance of the warrant.

(iv) The method of execution of the warrant violated federal or state constitutional standards.

(v) There was any other violation of federal or state constitutional standards.

(2) A motion pursuant to paragraph (1) shall be made in writing and accompanied by a memorandum of points and authorities and proof of service. The memorandum shall list the specific items of property or evidence sought to be returned or suppressed and shall set forth the factual basis and the legal authorities that demonstrate why the motion should be granted.

(b) When consistent with the procedures set forth in this section and subject to the provisions of Section 170 to 170.6, inclusive, of the Code of Civil Procedure, the motion should first be heard by the magistrate who issued the search warrant if there is a warrant.

(c) Whenever a search or seizure motion is made in the municipal or superior court as provided in this section, the judge or magistrate shall receive evidence on any issue of fact necessary to determine the motion.

(d) If a search or seizure motion is granted pursuant to the proceedings authorized by this section, the property or evidence shall not be admissible against the movant at any trial or other hearing unless further proceedings authorized by this section, Section 871.5, 1238, or 1466 are utilized by the people.

(e) If a search or seizure motion is granted at a trial, the property shall be returned upon order of the court unless it is otherwise subject to lawful detention. If the motion is granted at a special hearing, the property shall be returned upon order of the court only if, after the conclusion of any further proceedings authorized by this section, Section 1238 or 1466, the property is not subject to lawful detention or if the time for initiating the proceedings has expired, whichever occurs last. If the motion is granted at a preliminary hearing, the property shall be returned upon order of court after 10 days unless the property is otherwise subject to lawful detention or unless, within that time, further proceedings authorized by this section, Section 871.5 or 1238 are utilized; if they are utilized, the property shall be returned only if, after the conclusion of the proceedings, the property is no longer subject to lawful detention.

(f) (1) If the property or evidence relates to a felony offense initiated by a complaint, the motion shall be made in the superior court only upon filing of an information, except that the defendant may make the motion at the preliminary hearing in the municipal court or in the superior court in a county in which there is no municipal court, but the motion shall be restricted to evidence sought to be introduced by the people at the preliminary hearing.

(2) The motion may be made at the preliminary examination only if at least five court days before the date set for the preliminary examination the defendant has filed and personally served on the people a written motion accompanied by a memorandum of points and authorities as required by paragraph (2) of subdivision (a). At the preliminary examination, the magistrate may grant the

defendant a continuance for the purpose of filing the motion and serving the motion upon the people, at least five court days before resumption of the examination, upon a showing that the defendant or his or her attorney of record was not aware of the evidence or was not aware of the grounds for suppression before the preliminary examination.

(3) Any written response by the people to the motion described in paragraph (2) shall be filed with the court and personally served on the defendant or his or her attorney of record at least two court days prior to the hearing at which the motion is to be made.

(g) If the property or evidence relates to a misdemeanor complaint, the motion shall be made in the municipal court or in the superior court in a county in which there is no municipal court before trial and heard prior to trial at a special hearing relating to the validity of the search or seizure. If the property or evidence relates to a misdemeanor filed together with a felony, the procedure provided for a felony in this section and Sections 1238 and 1539 shall be applicable.

(h) If, prior to the trial of a felony or misdemeanor, opportunity for this motion did not exist or the defendant was not aware of the grounds for the motion, the defendant shall have the right to make this motion during the course of trial in the municipal or superior court.

(i) If the property or evidence obtained relates to a felony offense initiated by complaint and the defendant was held to answer at the preliminary hearing, or if the property or evidence relates to a felony offense initiated by indictment, the defendant shall have the right to renew or make the motion in the superior court at a special hearing relating to the validity of the search or seizure which shall be heard prior to trial and at least 10 court days after notice to the people, unless the people are willing to waive a portion of this time. Any written response by the people to the motion shall be filed with the court and personally served on the defendant or his or her attorney of record at least two court days prior to the hearing, unless the defendant is willing to waive a portion of this time. If the offense was initiated by indictment or if the offense was initiated by complaint and no motion was made at the preliminary hearing, the defendant shall have the right to fully litigate the validity of a search or seizure on the basis of the evidence presented at a special hearing. If the motion was made at the preliminary hearing, unless otherwise agreed to by all parties, evidence presented at the special hearing shall be limited to the transcript of the preliminary hearing and to evidence that could not reasonably have been presented at the preliminary hearing, except that the people may recall witnesses who testified at the preliminary hearing. If the people object to the presentation of evidence at the special hearing on the grounds that the evidence could reasonably have been presented at the preliminary hearing, the defendant shall be entitled to an in camera

hearing to determine that issue. The superior court shall base its ruling on all evidence presented at the special hearing and on the transcript of the preliminary hearing, and the findings of the magistrate shall be binding on the superior court as to evidence or property not affected by evidence presented at the special hearing. After the special hearing is held in the superior court, any review thereafter desired by the defendant prior to trial shall be by means of an extraordinary writ of mandate or prohibition filed within 30 days after the denial of his or her motion at the special hearing.

(j) If the property or evidence relates to a felony offense initiated by complaint and the defendant's motion for the return of the property or suppression of the evidence at the preliminary hearing is granted, and if the defendant is not held to answer at the preliminary hearing, the people may file a new complaint or seek an indictment after the preliminary hearing, and the ruling at the prior hearing shall not be binding in any subsequent proceeding, except as limited by subdivision (p). In the alternative, the people may move to reinstate the complaint, or those parts of the complaint for which the defendant was not held to answer, pursuant to Section 871.5. If the property or evidence relates to a felony offense initiated by complaint and the defendant's motion for the return or suppression of the property or evidence at the preliminary hearing is granted, and if the defendant is held to answer at the preliminary hearing, the ruling at the preliminary hearing shall be binding upon the people unless, upon notice to the defendant and the court in which the preliminary hearing was held and upon the filing of an information, the people, within 15 days after the preliminary hearing, request in the superior court a special hearing, in which case the validity of the search or seizure shall be relitigated de novo on the basis of the evidence presented at the special hearing, and the defendant shall be entitled, as a matter of right, to a continuance of the special hearing for a period of time up to 30 days. The people may not request relitigation of the motion at a special hearing if the defendant's motion has been granted twice. If the defendant's motion is granted at a special hearing in the superior court, the people, if they have additional evidence relating to the motion and not presented at the special hearing, shall have the right to show good cause at the trial why the evidence was not presented at the special hearing and why the prior ruling at the special hearing should not be binding, or the people may seek appellate review as provided in subdivision (o), unless the court, prior to the time the review is sought, has dismissed the case pursuant to Section 1385. If the case has been dismissed pursuant to Section 1385, or if the people dismiss the case on their own motion after the special hearing, the people may file a new complaint or seek an indictment after the special hearing, and the ruling at the special hearing shall not be binding in any subsequent proceeding, except as limited by subdivision (p). If the property or evidence seized relates solely to a misdemeanor

complaint, and the defendant made a motion for the return of property or the suppression of evidence in the municipal court or superior court in a county in which there is no municipal court prior to trial, both the people and defendant shall have the right to appeal any decision of that court relating to that motion to the superior court of the county in which the municipal or superior court is located, in accordance with the California Rules of Court provisions governing appeals to the appellate division in criminal cases. If the people prosecute review by appeal or writ to decision, or any review thereof, in a felony or misdemeanor case, it shall be binding upon them.

(k) If the defendant's motion to return property or suppress evidence is granted and the case is dismissed pursuant to Section 1385, or the people appeal in a misdemeanor case pursuant to subdivision (j), the defendant shall be released pursuant to Section 1318 if he or she is in custody and not returned to custody unless the proceedings are resumed in the trial court and he or she is lawfully ordered by the court to be returned to custody.

If the defendant's motion to return property or suppress evidence is granted and the people file a petition for writ of mandate or prohibition pursuant to subdivision (o) or a notice of intention to file such a petition, the defendant shall be released pursuant to Section 1318, unless (1) he or she is charged with a capital offense in a case where the proof is evident and the presumption great, or (2) he or she is charged with a noncapital offense defined in Chapter 1 (commencing with Section 187) of Title 8 of Part 1, and the court orders that the defendant be discharged from actual custody upon bail.

(*l*) If the defendant's motion to return property or suppress evidence is granted, the trial of a criminal case shall be stayed to a specified date pending the termination in the appellate courts of this state of the proceedings provided for in this section, Section 871.5, 1238, or 1466 and, except upon stipulation of the parties, pending the time for the initiation of these proceedings. Upon the termination of these proceedings, the defendant shall be brought to trial as provided by Section 1382, and, subject to the provisions of Section 1382, whenever the people have sought and been denied appellate review pursuant to subdivision (o), the defendant shall be entitled to have the action dismissed if he or she is not brought to trial within 30 days of the date of the order that is the last denial of the petition. Nothing contained in this subdivision shall prohibit a court, at the same time as it rules upon the search and seizure motion, from dismissing a case pursuant to Section 1385 when the dismissal is upon the court's own motion and is based upon an order at the special hearing granting the defendant's motion to return property or suppress evidence. In a misdemeanor case, the defendant shall be entitled to a continuance of up to 30 days if he or she intends to file a motion to return property or suppress evidence and needs this time to prepare for the special hearing on the motion. In case of an appeal by the defendant in a

misdemeanor case from the denial of the motion, he or she shall be entitled to bail as a matter of right, and, in the discretion of the trial or appellate court, may be released on his or her own recognizance pursuant to Section 1318.

(m) The proceedings provided for in this section, and Sections 871.5, 995, 1238, and 1466 shall constitute the sole and exclusive remedies prior to conviction to test the unreasonableness of a search or seizure where the person making the motion for the return of property or the suppression of evidence is a defendant in a criminal case and the property or thing has been offered or will be offered as evidence against him or her. A defendant may seek further review of the validity of a search or seizure on appeal from a conviction in a criminal case notwithstanding the fact that the judgment of conviction is predicated upon a plea of guilty. Review on appeal may be obtained by the defendant provided that at some stage of the proceedings prior to conviction he or she has moved for the return of property or the suppression of the evidence.

(n) This section establishes only the procedure for suppression of evidence and return of property, and does not establish or alter any substantive ground for suppression of evidence or return of property. Nothing contained in this section shall prohibit a person from making a motion, otherwise permitted by law, to return property, brought on the ground that the property obtained is protected by the free speech and press provisions of the United States and California Constitutions. Nothing in this section shall be construed as altering (1) the law of standing to raise the issue of an unreasonable search or seizure; (2) the law relating to the status of the person conducting the search or seizure; (3) the law relating to the burden of proof regarding the search or seizure; (4) the law relating to the reasonableness of a search or seizure regardless of any warrant that may have been utilized; or (5) the procedure and law relating to a motion made pursuant to Section 871.5 or 995, or the procedures that may be initiated after the granting or denial of such a motion.

(o) Within 30 days after a defendant's motion is granted at a special hearing in the superior court in a felony case, the people may file a petition for writ of mandate or prohibition in the court of appeal, seeking appellate review of the ruling regarding the search or seizure motion. If the trial of a criminal case is set for a date that is less than 30 days from the granting of a defendant's motion at a special hearing in the superior court in a felony case, the people, if they have not filed such a petition and wish to preserve their right to file a petition, shall file in the superior court on or before the trial date or within 10 days after the special hearing, whichever occurs last, a notice of intention to file a petition and shall serve a copy of the notice upon the defendant.

(p) If a defendant's motion to return property or suppress evidence in a felony matter has been granted twice, the people may not file a new complaint or seek an indictment in order to relitigate

the motion or relitigate the matter de novo at a special hearing in the superior court as otherwise provided by subdivision (j), unless the people discover additional evidence relating to the motion that was not reasonably discoverable at the time of the second suppression hearing. Relitigation of the motion shall be heard by the same judge who granted the motion at the first hearing if the judge is available.

(q) The amendments to this section enacted in the 1997 portion of the 1997–98 Regular Session of the Legislature shall apply to all criminal proceedings conducted on or after January 1, 1998.

SEC. 429. Section 2620 of the Penal Code is amended to read:

2620. When it is necessary to have a person imprisoned in the state prison brought before any court to be tried for a felony, or for an examination before a grand jury or magistrate preliminary to such trial, or for the purpose of hearing a motion or other proceeding, to vacate a judgment, an order for the prisoner's temporary removal from said prison, and for the prisoner's production before such court, grand jury or magistrate, must be made by the superior court of the county in which said action, motion, or examination is pending or by a judge thereof; such order shall be made only upon the affidavit of the district attorney or defense attorney, stating the purpose for which said person is to be brought before the court, grand jury or magistrate or upon the court's own motion. The order shall be executed by the sheriff of the county in which it shall be made, whose duty it shall be to bring the prisoner before the proper court, grand jury or magistrate, to safely keep the prisoner, and when the prisoner's presence is no longer required to return the prisoner to the prison from whence the prisoner was taken; the expense of executing such order shall be a proper charge against, and shall be paid by, the county in which the order shall be made.

Such order shall recite the purposes for which said person is to be brought before the court, grand jury or magistrate, and shall be signed by the judge making the order and sealed with the seal of the court. The order must be to the following effect:

County of _____ (as the case may be).

The people of the State of California to the warden of _____:

An order having been made this day by me, that A.B. be produced in the _____ court (or before the grand jury, as the case may be) to be prosecuted or examined for the crime of _____, a felony (or to have said motion heard), you are commanded to deliver the prisoner into the custody of _____ for the purpose of (recite purposes).

Dated this _____ day of _____, 19____.

When a prisoner is removed from a state prison under this section the prisoner shall remain in the constructive custody of the warden thereof. During the prisoner's absence from the prison, the prisoner may be ordered to appear in other felony proceedings as a defendant

or witness in the courts of the county from which the original order directing removal issued. A copy of the written order directing the prisoner to appear before any such court shall be forwarded by the district attorney to the warden of the prison having protective custody of the prisoner.

SEC. 430. Section 2621 of the Penal Code is amended to read:

2621. When the testimony of a material witness is required in a criminal action, before any court in this state, or in an examination before a grand jury or magistrate in a felony case and such witness is a prisoner in a state prison, an order for the prisoner's temporary removal from such prison, and for the prisoner's production before such court, grand jury or magistrate, may be made by the superior court of the county in which such action or examination is pending or by a judge thereof; but in case the prison is out of the county in which the application is made, such order shall be made only upon the affidavit of the district attorney or of the defendant or the defendant's counsel, showing that the testimony is material and necessary; and even then the granting of the order shall be in the discretion of said superior court or a judge thereof. The order shall be executed by the sheriff of the county in which it is made, whose duty it shall be to bring the prisoner before the proper court, grand jury or magistrate, to safely keep the prisoner, and when the prisoner is no longer required as a witness, to return the prisoner to the prison whence the prisoner was taken; the expense of executing such order shall be a proper charge against, and shall be paid by, the county in which the order shall be made. Such orders shall recite the purposes for which said person is to be brought before the court, grand jury or magistrate, and shall be signed by the magistrate or judge making the order, and sealed with the seal of the court, if any.

Such order must be to the following effect:

County of _____ (as the case may be).

The people of the State of California to the warden of _____:

An order having been made this day by me, that A. B. be produced in this court as witness in the case of _____, you are commanded to deliver the prisoner into the custody of _____ for the purpose of (recite purposes).

Dated this _____ day of _____, 19____.

When a prisoner is removed from a state prison under this section the prisoner shall remain in the constructive custody of the warden hereof. During the prisoner's absence from the prison, the prisoner may be ordered to appear in other felony proceedings as a defendant or witness in the courts of the county from which the original order directing removal issued. A copy of the written order directing the prisoner to appear before any such court shall be forwarded by the district attorney to the warden of the prison having protective custody of the prisoner.

SEC. 431. Section 2623 of the Penal Code is amended to read:

2623. If in a civil action or special proceeding a witness be a prisoner, confined in a state prison within this state, an order for the prisoner's examination in the prison by deposition may be made.

1. By the court itself in which the action or special proceeding is pending, unless it be a small claims court.

2. By a judge of the superior court of the county where the action or proceeding is pending, if pending before a small claims court or before a judge or other person out of court.

Such order can only be made on the motion of a party, upon affidavit showing the nature of the action or proceeding, the testimony expected from the witness, and its materiality. The deposition, when ordered, shall be taken in accordance with Section 2622.

SEC. 432. Section 3076 of the Penal Code is amended to read:

3076. (a) The board may make, establish and enforce rules and regulations adopted under this article.

(b) The board shall act at regularly called meetings at which two-thirds of the members are present, and shall make and establish rules and regulations in writing stating the reasons therefor under which any prisoner who is confined in or committed to any county jail, work furlough facility, industrial farm, or industrial road camp, or in any city jail, work furlough facility, industrial farm, or industrial road camp under a judgment of imprisonment or as a condition of probation for any criminal offense, unless the court at the time of committing has ordered that such prisoner confined as a condition of probation upon conviction of a felony not be granted parole, may be allowed to go upon parole outside of such jail, work furlough facility, industrial farm, or industrial road camp, but to remain, while on parole, in the legal custody and under the control of the board establishing the rules and regulations for the prisoner's parole, and subject at any time to be taken back within the enclosure of any such jail, work furlough facility, industrial farm, or industrial road camp.

(c) The board shall provide a complete copy of its written rules and regulations and reasons therefor and any amendments thereto to each of the judges of the county's municipal and superior courts.

The board shall provide to the persons in charge of the county's correctional facilities a copy of the sections of its written rules and regulations and any amendments thereto which govern eligibility for parole, and the name and telephone number of the person or agency to contact for additional information. Such rules and regulations governing eligibility either shall be conspicuously posted and maintained within each county correctional facility so that all prisoners have access to a copy, or shall be given to each prisoner.

SEC. 433. Section 4004 of the Penal Code is amended to read:

4004. A prisoner committed to the county jail for examination, or upon conviction for a public offense, must be actually confined in the jail until legally discharged; and if the prisoner is permitted to go at

large out of the jail, except by virtue of a legal order or process, it is an escape; provided, however, that during the pendency of a criminal proceeding, the court before which said proceeding is pending may make a legal order, good cause appearing therefor, for the removal of the prisoner from the county jail in custody of the sheriff. In courts where there is a marshal, the marshal shall maintain custody of such prisoner while the prisoner is in the court facility pursuant to such court order. The superior court of the county may make a legal order, good cause appearing therefor, for the removal of prisoners confined in the county jail, after conviction, in the custody of the sheriff.

If facilities are no longer available in the county jail due to crowded conditions, a sheriff may transfer a person committed to the county jail upon conviction for a public offense to facilities which are available in the city jail, as provided for in Section 4004.5.

SEC. 434. Section 4022 of the Penal Code is amended to read:

4022. Whenever by the terms of this code, or of any other law of the state, it is provided that a prisoner shall be confined in any county jail, such provision shall be construed to authorize any prisoner convicted of a misdemeanor to be confined, with the consent of the city, in any city jail in the judicial district in which the offense was committed, and as to such prisoner so confined in such city jail, the designations, county jail and city jail shall be interchangeable, and in such case the obligations to which the county is liable in case of confinement in a county jail, shall become liabilities of the city where such prisoner is confined in a city jail.

SEC. 435. Section 4024.1 of the Penal Code is amended to read:

4024.1. (a) The sheriff, chief of police, or any other person responsible for a county or city jail may apply to the presiding judge of the municipal or superior court to receive general authorization for a period of 30 days to release inmates pursuant to the provisions of this section.

(b) Whenever, after being authorized by a court pursuant to subdivision (a), the actual inmate count exceeds the actual bed capacity of a county or city jail, the sheriff, chief of police, or other person responsible for such county or city jail may accelerate the release, discharge, or expiration of sentence date of sentenced inmates up to a maximum of five days.

(c) The total number of inmates released pursuant to this section shall not exceed a number necessary to balance the inmate count and actual bed capacity.

(d) Inmates closest to their normal release, discharge, or expiration of sentence date shall be given accelerated release priority.

(e) The number of days that release, discharge, or expiration of sentence is accelerated shall in no case exceed 10 percent of the particular inmate's original sentence, prior to the application thereto of any other credits or benefits authorized by law.

SEC. 436. Section 4112 of the Penal Code is amended to read:

4112. When land has been acquired and such buildings and structures erected and improvements made as may be immediately necessary for the carrying out of the purposes of this article or arrangements have been made for an industrial road camp or camps, the board of supervisors shall adopt a resolution proclaiming that an industrial farm or road camp has been established in the county and designating a day on and after which persons will be admitted to such farm or camp. Certified copies of the resolution shall be forwarded by the clerk of the board of supervisors to each municipal court judge in the county or each superior court judge in a county in which there is no municipal court.

SEC. 437. Section 13125 of the Penal Code is amended to read:

13125. All basic information stored in state or local criminal offender record information systems shall be recorded, when applicable and available, in the form of the following standard data elements:

The following personal identification data:
- Name—(full name)
  - Aliases
  - Monikers
- Race
- Sex
- Date of birth
- Place of birth (state or country)
- Height
- Weight
- Hair color
- Eye color
- CII number
- FBI number
- Social security number
- California operators license number
- Fingerprint classification number
  - Henry
  - NCIC
- Address

The following arrest data:
- Arresting agency
- Booking number
- Date of arrest
- Offenses charged
  - Statute citations

Literal descriptions
Police disposition
Released
Cited and released
Turned over to
Complaint filed
The following misdemeanor or infraction data or preliminary hearing data:
County and court name
Date complaint filed
Original offenses charged in a complaint or citation
Held to answer
Certified plea
Disposition
Not convicted
Dismissed
Acquitted
Court trial
Jury trial
Convicted
Plea
Court trial
Jury trial
Date of disposition
Convicted offenses
Sentence
Proceedings suspended
Reason suspended
The following superior court data:
County
Date complaint filed
Type of proceeding
Indictment
Information
Certification
Original offenses charged in indictment or information
Disposition
Not convicted

- Dismissed
- Acquitted
  - Court trial
  - Jury trial
  - On transcript
- Convicted—felony, misdemeanor
  - Plea
  - Court trial
  - Jury trial
  - On transcript
- Date of disposition
- Convicted offenses
- Sentence
- Proceedings suspended
  - Reason suspended
- Source of reopened cases

The following corrections data:

- Adult probation
  - County
  - Type of court
  - Court number
  - Offense
  - Date on probation
  - Date removed
  - Reason for removal
- Jail (unsentenced prisoners only)
  - Offenses charged
  - Name of jail or institution
  - Date received
  - Date released
  - Reason for release
    - Bail on own recognizance
    - Bail
    - Other
  - Committing agency
- County jail (sentenced prisoners only)
  - Name of jail, camp, or other
  - Convicted offense
  - Sentence
  - Date received

Date released
Reason for release
Committing agency
Youth Authority
County
Type of court
Court number
Youth Authority number
Date received
Convicted offense
Type of receipt
Original commitment
Parole violator
Date released
Type of release
Custody
Supervision
Date terminated
Department of Corrections
County
Type of court
Court number
Department of Corrections number
Date received
Convicted offense
Type of receipt
Original commitment
Parole violator
Date released
Type of release
Custody
Supervision
Date terminated
Mentally disordered sex offenders
County
Hospital number
Date received
Date discharged
Recommendation

SEC. 438. Section 13151 of the Penal Code is amended to read:

13151. The superior or municipal court that disposes of a case for which an arrest was required to be reported to the Department of Justice pursuant to Section 13150 or for which fingerprints were taken and submitted to the Department of Justice by order of the court shall assure that a disposition report of such case containing the applicable data elements enumerated in Section 13125, or Section 13151.1 if such disposition is one of dismissal, is furnished to the Department of Justice within 30 days according to the procedures and on a format prescribed by the department. The court shall also furnish a copy of such disposition report to the law enforcement agency having primary jurisdiction to investigate the offense alleged in the complaint or accusation. Whenever a court shall order any action subsequent to the initial disposition of a case, the court shall similarly report such proceedings to the department.

SEC. 439. Section 14154 of the Penal Code is amended to read:

14154. In a county in which the district attorney has established a community conflict resolution program, the municipal court or the superior court in a county in which there is no municipal court may, with the consent of the district attorney and the defendant, refer misdemeanor cases, including those brought by a city prosecutor, to that program. In determining whether to refer a case to the community conflict resolution program, the court shall consider, but is not limited to considering, all of the following:

(a) The factors listed in Section 14152.

(b) Any other referral criteria established by the district attorney for the program.

The court shall not refer any case to the community conflict resolution program which was previously referred to that program by the district attorney.

SEC. 440. Section 3357 of the Public Resources Code is amended to read:

3357. In any proceeding before the director, and in any proceeding instituted by the supervisor for the purpose of enforcing or carrying out the provisions of this division, or for the purpose of holding an investigation to ascertain the condition of any well or wells complained of, or which in the opinion of the supervisor may reasonably be presumed to be improperly located, drilled, operated, maintained, or conducted, the supervisor and the director shall have the power to administer oaths and may apply to a judge of the superior court of the county in which the proceeding or investigation is pending for a subpoena for witnesses to attend the proceeding or investigation. Upon the application of the supervisor or the director, the judge of the superior court shall issue a subpoena directing the witness to attend the proceeding or investigation, and such person shall be required to produce, when directed, all records, surveys, documents, books, or accounts in the witness' custody or under the witness' control; except that no person shall be required to attend upon such proceeding unless the person resides within the same

county or within 100 miles of the place of attendance. The supervisor or the director may in such case cause the depositions of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil actions in superior courts of this state under Article 3 (commencing with Section 2016) of Chapter 3 of Title 4 of Part 4 of the Code of Civil Procedure, and may, upon application to a judge of the superior court of the county within which the proceeding or investigation is pending, obtain a subpoena compelling the attendance of witnesses and the production of records, surveys, documents, books, or accounts at such places as the judge may designate within the limits prescribed in this section.

SEC. 441. Section 3769 of the Public Resources Code is amended to read:

3769. In any proceeding instituted by the supervisor for the purpose of enforcing or carrying out the provisions of this chapter, or for the purpose of holding an investigation to ascertain the condition of any well or wells complained of, or which in the opinion of the supervisor may reasonably be presumed to be improperly located, drilled, operated, maintained, or conducted, the supervisor shall have the power to administer oaths and may apply to a judge of the superior court of the county in which the proceeding or investigation is pending, for a subpoena for witnesses to attend the proceeding or investigation. Upon the application of the supervisor, the judge of the superior court shall issue a subpoena directing the witness to attend the proceeding or investigation, and such person shall be required to produce, when directed, all records, surveys, documents, books, or accounts in the witness' custody or under the witness' control; except that no person shall be required to attend upon such proceeding, unless the person resides within the same county or within 100 miles of the place of attendance.

The supervisor may in such case cause the depositions of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil actions in superior courts of this state under Article 3 (commencing with Section 2016) of Chapter 3 of Title 4 of Part 4 of the Code of Civil Procedure, and may, upon application to a judge of the superior court of the county within which the proceeding or investigation is pending, obtain a subpoena compelling the attendance of witnesses and the production of records, surveys, documents, books, or accounts at such places as the judge may designate within the limits prescribed in this section.

SEC. 442. Section 5560 of the Public Resources Code is amended to read:

5560. (a) Violation of any ordinance, rule, or regulation adopted pursuant to this article is a misdemeanor punishable by a fine not to exceed five hundred dollars ($500) or by imprisonment in the county jail for a period not to exceed six months, or by both such fine and imprisonment, unless the board provides that a violation of any

ordinance, rule, or regulation is an infraction, which shall be punishable by a fine not to exceed fifty dollars ($50).

(b) Any municipal court which may be established within the district, or superior court in a county in which there is no municipal court, shall have jurisdiction of all prosecutions under this article for violations of any ordinance, rule, or regulation adopted by the board.

SEC. 443. Section 1794 of the Public Utilities Code is amended to read:

1794. The commission or any commissioner or any party may, in any investigation or hearing before the commission, cause the deposition of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil actions in the superior courts of this state under Article 3 (commencing with Section 2016) of Chapter 3 of Title 4 of Part 4 of the Code of Civil Procedure and to that end may compel the attendance of witnesses and the production of books, waybills, documents, papers, and accounts.

SEC. 444. Section 5411.5 of the Public Utilities Code is amended to read:

5411.5. Whenever a peace officer arrests a person for a violation of Section 5411 involving the operation of a charter-party carrier of passengers without a valid certificate or permit at a public airport, within 100 feet of a public airport, or within two miles of the international border between the United States and Mexico, the peace officer may impound and retain possession of the vehicle used in violation of Section 5411.

If the vehicle is seized from a person who is not the owner of the vehicle, the impounding authority shall immediately give notice to the owner by first-class mail.

The vehicle shall immediately be returned to the owner without cost to the owner if the infraction or violation is not prosecuted or is dismissed, the owner is found not guilty of the offense, or it is determined that the vehicle was used in violation of Section 5411 without the knowledge and consent of the owner. Otherwise, the vehicle shall be returned to the owner upon payment of any fine ordered by the court. After the expiration of six weeks from the final disposition of the criminal case, the impounding authority may deal with the vehicle as lost or abandoned property under Section 1411 of the Penal Code.

At any time, a person may make a motion in municipal court, or in superior court in a county in which there is no municipal court, for the immediate return of the vehicle on the ground that there was no probable cause to seize it or that there is some other good cause, as determined by the court, for the return of the vehicle. A proceeding under this section is a limited civil case.

No peace officer, however, shall impound any vehicle owned or operated by a nonprofit organization exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code which serves

youth or senior citizens and provides transportation incidental to its programs or services.

SEC. 445. Section 103100 of the Public Utilities Code is amended to read:

103100. The government of the district shall be vested in a board of directors, which shall consist of nine members, selected as follows:

(a) Three members, two of whom shall, at the time of their appointments and during their service as directors, be members of the board of supervisors and one of whom shall possess expertise in the field of transportation, appointed by the board of supervisors.

(b) Three members, all of whom shall be city council members at the time of their appointments and during their service as directors, appointed by the city selection committee created pursuant to Article 11 (commencing with Section 50270), Chapter 1, Part 1, Division 1, Title 5 of the Government Code.

(c) Three members, one of whom shall be a resident of the coastal zone as defined in Section 27100 of the Public Resources Code, at the time of their appointments and during their service as directors, appointed by the six members appointed pursuant to subdivisions (a) and (b).

SEC. 446. Section 6776 of the Revenue and Taxation Code is amended to read:

6776. At any time within three years after any person is delinquent in the payment of any amount herein required to be paid, or within 10 years after the last recording of an abstract under Section 6738 or the last recording or filing of a notice of state tax lien under Section 7171 of the Government Code, the board or its authorized representative may issue a warrant for the enforcement of any liens and for the collection of any amount required to be paid to the state under this part. The warrant shall be directed to any sheriff, marshal, or the Department of the California Highway Patrol and shall have the same effect as a writ of execution. The warrant shall be levied and sale made pursuant to it in the same manner and with the same effect as a levy of and a sale pursuant to a writ of execution and shall be levied within five working days following receipt of the warrant.

SEC. 447. Section 6777 of the Revenue and Taxation Code is amended to read:

6777. The board may pay or advance to the sheriff, marshal, or the Department of the California Highway Patrol, the same fees, commissions, and expenses for services as are provided by law for similar services rendered pursuant to a writ of execution. The board, and not the court, shall approve the fees for publication in a newspaper.

SEC. 448. Section 19232 of the Revenue and Taxation Code is amended to read:

19232. The warrant shall be directed to any sheriff, marshal, or the Department of the California Highway Patrol and shall have the same force and effect as a writ of execution. The warrant shall be

levied and sale made pursuant to it in the same manner and with the same force and effect as a levy of and sale pursuant to a writ of execution.

SEC. 449. Section 19233 of the Revenue and Taxation Code is amended to read:

19233. The Franchise Tax Board shall pay or advance to the sheriff, marshal, or the Department of the California Highway Patrol the same fees, commissions, and expenses as are provided by law for similar services pursuant to a writ of execution. The Franchise Tax Board, and not the court, shall approve the fees for publication in a newspaper.

SEC. 450. Section 19280 of the Revenue and Taxation Code is amended to read:

19280. (a) (1) Fines, state or local penalties, forfeitures, restitution fines, restitution orders, or any other amounts imposed by a superior municipal court of the State of California upon a person or any other entity that is due and payable in an amount totaling no less than two hundred fifty dollars ($250), in the aggregate, for criminal offenses, including all offenses involving a violation of the Vehicle Code except offenses relating to parking or registration or offenses by pedestrians or bicyclists, may, no sooner than 90 days after payment of that amount becomes delinquent, be referred by the county or the state to the Franchise Tax Board for collection under guidelines prescribed by the Franchise Tax Board.

(2) For purposes of this subdivision:

(A) The amounts referred by the county or state under this section may include any amounts that a government entity may add to the court-imposed obligation as a result of the underlying offense, trial, or conviction. For purposes of this article, those amounts shall be deemed to be imposed by the court.

(B) Restitution orders may be referred to the Franchise Tax Board only by a government entity, as agreed upon by the Franchise Tax Board, provided that all of the following apply:

(i) The government entity has the authority to collect on behalf of the state or the victim.

(ii) The government entity shall be responsible for distributing the restitution order collections, as appropriate.

(iii) The government entity shall ensure, in making the referrals and distributions, that it coordinates with any other related collection activities that may occur by counties or other state agencies.

(iv) The government entity shall ensure compliance with laws relating to the reimbursement of the State Restitution Fund.

(C) The Franchise Tax Board shall establish criteria for referral, which shall include setting forth a minimum dollar amount subject to referral and collection.

(b) For the period January 1, 1995, to December 31, 1997, inclusive, for purposes of a manageable implementation and

evaluation of the program authorized by this article, the Franchise Tax Board may limit referrals to nine counties.

(c) Upon written notice to the obligor from the Franchise Tax Board, any amount referred to the Franchise Tax Board under subdivision (a) and any interest thereon, including any interest on the amount referred under subdivision (a) that accrued prior to the date of referral, shall be treated as final and due and payable to the State of California, and shall be collected from the obligor by the Franchise Tax Board in any manner authorized under the law for collection of a delinquent personal income tax liability, including, but not limited to, issuance of an order and levy under Article 4 (commencing with Section 706.070) of Chapter 5 of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure in the manner provided for earnings withholding orders for taxes.

(d) (1) Part 10 (commencing with Section 17001), this part, Part 10.7 (commencing with Section 21001), and Part 11 (commencing with Section 23001) shall apply to amounts referred under this article in the same manner and with the same force and effect and to the full extent as if the language of those laws had been incorporated in full into this article, except to the extent that any provision is either inconsistent with this article or is not relevant to this article.

(2) Any information, information sources, or enforcement remedies and capabilities available to the court or the state referring to the amount due described in subdivision (a), shall be available to the Franchise Tax Board to be used in conjunction with, or independent of, the information, information sources, or remedies and capabilities available to the Franchise Tax Board for purposes of administering Part 10 (commencing with Section 17001), this part, Part 10.7 (commencing with Section 21001), or Part 11 (commencing with Section 23001).

(e) The activities required to implement and administer this part shall not interfere with the primary mission of the Franchise Tax Board to administer Part 10 (commencing with Section 17001) and Part 11 (commencing with Section 23001).

(f) For amounts referred for collection under subdivision (a), interest shall accrue at the greater of the rate applicable to the amount due being collected or the rate provided under Section 19521. When notice of the amount due includes interest and is mailed to the obligor and the amount is paid within 15 days after the date of notice, interest shall not be imposed for the period after the date of notice.

(g) In no event shall a collection under this article be construed as a payment of income taxes imposed under Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001).

SEC. 451. Section 1785 of the Unemployment Insurance Code is amended to read:

1785. If any amount required to be paid under this division is not paid when due, the director or the director's authorized

representative may, not later than three years after the payment became delinquent, or within 10 years after the last entry of a judgment under Article 5 (commencing with Section 1815) or within 10 years after the last recording or filing of a notice of state tax lien under Section 7171 of the Government Code, issue a warrant for the enforcement of any liens and for the collection of any amount required to be paid to the state under this division. The warrant shall be directed to any sheriff, marshal, or peace officer of the Department of the California Highway Patrol and shall have the same effect as a writ of execution. The warrant shall be levied and sale made pursuant to it in the same manner and with the same effect as a levy of and a sale pursuant to a writ of execution.

SEC. 452. Section 1786 of the Unemployment Insurance Code is amended to read:

1786. The department may pay or advance to the sheriff, marshal, or peace officer of the Department of the California Highway Patrol the same fees, commissions, and expenses for his or her services under this article as are provided by law for similar services pursuant to a writ of execution. The director, and not the court, shall approve the fees for publication in a newspaper.

SEC. 453. Section 2802.5 of the Vehicle Code is amended to read:

2802.5. (a) The Department of the California Highway Patrol, in cooperation with the Public Utilities Commission, the State Board of Equalization, the Department of Motor Vehicles, the Judicial Council, and other appropriate agencies, shall develop an interagency agreement under which the agencies shall assign one or more employees or interagency clerks at one or more commercial vehicle inspection facilities of the department which are open on a continuous basis. The employees or interagency clerks shall be assigned duties to perform on behalf of the state agencies which are a party to the agreement as specified in subdivision (b). However, in the case of the Judicial Council, the clerk shall perform duties on behalf of the clerk of the municipal court district in which the inspection facility is located, or of the superior court in a county in which there is no municipal court.

(b) The employees or interagency clerks may issue registration permits for any of the state agencies which are parties to the interagency agreement, accept the payment of any fees due any of the state agencies, accept payment of bail or fines, set court dates, and perform other ministerial administrative functions for the state agencies or court. The Department of the California Highway Patrol, in cooperation with the other state agencies, shall provide computerized equipment appropriate to identify the status of any vehicles or drivers passing through the inspection facility. The employees or interagency clerks shall accept payment by credit card. Assigned personnel may remain the employees of their respective agencies, or as may otherwise be provided by the interagency agreement. The interagency agreement shall provide for sharing of

associated costs between participating agencies, based on the anticipated enhanced revenue collections.

(c) At the request of any peace officer, the employees or interagency clerks shall determine the status of any outstanding warrants and whether all fees due have been paid with respect to a driver or vehicle present at the inspection facility.

(d) A peace officer at the inspection facility may store or impound any vehicle upon determination that the vehicle or the driver of the vehicle has failed to pay registration, regulatory, fuel permit, or other fees, or has any outstanding warrants in any county in the state. The stored or impounded vehicle shall be released upon payment of those fees, fines, or the posting of bail. Upon request, the driver or owner of the vehicle may request a hearing to determine the validity of the seizure.

(e) The Department of the California Highway Patrol may implement this program as a demonstration pilot program at one or more locations. The department, on or before February 1, 1992, shall report its recommendations for continuation, expansion, or termination of the program to the Legislature. The report shall also include comments from the trucking industry concerning the benefits and problems in the program and any recommendations as a result of the pilot project. The report shall also consider the potential for ports of entry at major highway entry points to California, similar to programs already implemented in other states.

SEC. 454. Section 9872.1 of the Vehicle Code is amended to read:

9872.1. (a) No person shall knowingly buy, sell, offer for sale, receive, or have in his or her possession any vessel, or component part thereof, from which the hull identification number has been removed, defaced, altered, or destroyed, unless the vessel or component part has attached thereto a hull identification number assigned or approved by the department in lieu of the manufacturer's number.

(b) Whenever a vessel, or component part thereof, from which the hull identification number has been removed, defaced, altered, or destroyed, and which does not have attached thereto an assigned or approved number as described in subdivision (a), comes into the custody of a peace officer, the seized vessel or component part is subject, in accordance with the procedures specified in this section, to impoundment and to such disposition as may be provided by order of a court having jurisdiction. This subdivision does not apply with respect to a seized vessel or component part used as evidence in any criminal action or proceeding.

(c) Whenever a vessel or component part described in subdivision (a) comes into the custody of a peace officer, any person from whom the property was seized, and all claimants to the property whose interest or title is on registration records in the department, shall be notified within five days, excluding Saturdays, Sundays, and holidays, after the seizure, of the date, time, and place of the hearing required

in subdivision (e). The notice shall contain the information specified in subdivision (d).

(d) Whenever a peace officer seizes a vessel or component part as provided in subdivision (b), any person from whom the property was seized shall be provided a notice of impoundment of the vessel or component part which shall serve as a receipt and contain the following information:

(1) Name and address of person from whom the property was seized.

(2) A statement that the vessel or component part seized has been impounded for investigation of a violation of this section and that the property will be released upon a determination that the hull identification number has not been removed, defaced, altered, or destroyed, or upon the presentation of satisfactory evidence of ownership of the vessel or component part, provided that no other person claims an interest in the property; otherwise, a hearing regarding the disposition of the vessel or component part shall take place in the proper court.

(3) A statement that any person from whom the property was seized, and all claimants to the property whose interest or title is on registration records in the department, will receive written notification of the date, time, and place of the hearing within five days, excluding Saturdays, Sundays, and holidays, after the seizure.

(4) Name and address of the law enforcement agency where evidence of ownership of the vessel or component part may be presented.

(5) A statement of the contents of this section.

(e) A hearing on the disposition of the property shall be held by the municipal court, or by the superior court in a county in which there is no municipal court, within 60 days after the seizure. The hearing shall be before the court without a jury. A proceeding under this section is a limited civil case.

(1) If the evidence reveals either that the hull identification number has not been removed, altered, or destroyed or that the hull identification number has been removed, altered, or destroyed but satisfactory evidence of ownership has been presented to the seizing agency or court, the property shall be released to the person entitled thereto.

(2) If the evidence reveals that the hull identification number has been removed, altered, or destroyed, and satisfactory evidence of ownership has not been presented, the property shall be destroyed, sold, or otherwise disposed of as provided by court order.

(3) At the hearing, the seizing agency shall have the burden of establishing that the hull identification number has been removed, defaced, altered, or destroyed and that no satisfactory evidence of ownership has been presented.

(f) Nothing in this section precludes the return of a seized vessel or component part to the owner by the seizing agency following

presentation of satisfactory evidence of ownership and, if determined necessary, upon the assignment of an identification number to the vessel or component part by the department.

SEC. 455. Section 10751 of the Vehicle Code is amended to read:

10751. (a) No person shall knowingly buy, sell, offer for sale, receive, or have in his or her possession, any vehicle, or component part thereof, from which any serial or identification number, including, but not limited to, any number used for registration purposes, that is affixed by the manufacturer to the vehicle or component part, in whatever manner deemed proper by the manufacturer, has been removed, defaced, altered, or destroyed, unless the vehicle or component part has attached thereto an identification number assigned or approved by the department in lieu of the manufacturer's number.

(b) Whenever a vehicle described in subdivision (a), including a vehicle assembled with any component part which is in violation of subdivision (a), comes into the custody of a peace officer, it shall be destroyed, sold, or otherwise disposed of under the conditions as provided in an order by the court having jurisdiction. No court order providing for disposition shall be issued unless the person from whom the property was seized, and all claimants to the property whose interest or title is on registration records in the Department of Motor Vehicles, are provided a postseizure hearing by the court having jurisdiction within 90 days after the seizure. This subdivision shall not apply with respect to a seized vehicle or component part used as evidence in any criminal action or proceeding. Nothing in this section shall, however, preclude the return of a seized vehicle or a component part to the owner by the seizing agency following presentation of satisfactory evidence of ownership and, if determined necessary, upon the assignment of an identification number to the vehicle or component part by the department.

(c) Whenever a vehicle described in subdivision (a) comes into the custody of a peace officer, the person from whom the property was seized, and all claimants to the property whose interest or title is on registration records in the Department of Motor Vehicles, shall be notified within five days, excluding Saturdays, Sundays, and holidays, after the seizure, of the date, time, and place of the hearing required in subdivision (b). The notice shall contain the information specified in subdivision (d).

(d) Whenever a peace officer seizes a vehicle described in subdivision (a), the person from whom the property was seized shall be provided a notice of impoundment of the vehicle which shall serve as a receipt and contain the following information:

(1) Name and address of person from whom the property was seized.

(2) A statement that the vehicle seized has been impounded for investigation of a violation of Section 10751 of the California Vehicle Code and that the property will be released upon a determination

that the serial or identification number has not been removed, defaced, altered, or destroyed, or upon the presentation of satisfactory evidence of ownership of the vehicle or a component part, if no other person claims an interest in the property; otherwise, a hearing regarding the disposition of the vehicle shall take place in the proper court.

(3) A statement that the person from whom the property was seized, and all claimants to the property whose interest or title is on registration records in the Department of Motor Vehicles, will receive written notification of the date, time, and place of the hearing within five days, excluding Saturdays, Sundays, and holidays, after the seizure.

(4) Name and address of the law enforcement agency where evidence of ownership of the vehicle or component part may be presented.

(5) A statement of the contents of Section 10751 of the Vehicle Code.

(e) A hearing on the disposition of the property shall be held by the municipal court, or by the superior court in a county in which there is no municipal court, within 90 days after the seizure. The hearing shall be before the court without a jury. A proceeding under this section is a limited civil case.

(1) If the evidence reveals either that the serial or identification number has not been removed, defaced, altered, or destroyed or that the number has been removed, defaced, altered, or destroyed but satisfactory evidence of ownership has been presented to the seizing agency or court, the property shall be released to the person entitled thereto. Nothing in this section precludes the return of the vehicle or a component part to a good faith purchaser following presentation of satisfactory evidence of ownership thereof upon the assignment of an identification number to the vehicle or component part by the department.

(2) If the evidence reveals that the identification number has been removed, defaced, altered, or destroyed, and satisfactory evidence of ownership has not been presented, the vehicle shall be destroyed, sold, or otherwise disposed of as provided by court order.

(3) At the hearing, the seizing agency has the burden of establishing that the serial or identification number has been removed, defaced, altered, or destroyed and that no satisfactory evidence of ownership has been presented.

(f) This section does not apply to a scrap metal processor engaged primarily in the acquisition, processing, and shipment of ferrous and nonferrous scrap, and who receives dismantled vehicles from licensed dismantlers, licensed junk collectors, or licensed junk dealers as scrap metal for the purpose of recycling the dismantled vehicles for their metallic content, the end product of which is the production of material for recycling and remelting purposes for steel mills, foundries, smelters, and refiners.

SEC. 455.5. Section 11205 of the Vehicle Code, as amended by Section 48 of Chapter 571 of the Statutes of 1997, is amended to read:

11205. (a) The department shall publish a traffic violator school referral list of all the approved locations of traffic violator school classes, by school name, to be transmitted to each municipal court in the state, and to each superior court in a county in which there is no municipal court, in sufficient quantity to allow the courts to provide a copy to each person referred to traffic violator school. The list shall be revised at least twice annually and transmitted to the courts by the first day of January and the first day of July. It shall include all of the following:

(1) The name of each traffic violator school or, pursuant to subdivision (d), the general term "traffic violator school" followed by its traffic violator school license number.

(2) A phone number used for student information.

(3) The county and the judicial district.

(4) The cities where classes are available.

(b) Each traffic violator school owner shall be permitted one school name in a judicial district.

(c) The list shall be organized alphabetically in sections for each county and subsections for each judicial district within the county. The order of the names within each judicial district shall be random pursuant to a drawing or lottery conducted by the department.

(d) On the list prepared by the department under subdivision (c), each traffic violator school shall appear by name unless a court determines, pursuant to subdivision (e), that a name is inappropriate and directs the department to delete the name and instead list the school by the term "traffic violator school" followed by its license number. The deletion of the name of a school from the list for a judicial district shall not affect whether that school appears by name on the list for any other judicial district within the state. In making a determination under this subdivision regarding the deletion of a name from the list, the court shall use as its criteria whether the name is misleading to the public, undignified, or implies that the school offers inducements or premiums which derogate or distort the instructional intent of the traffic safety program.

(e) When the department transmits any referral list pursuant to subdivision (a), each court shall do all of the following:

(1) Within 30 days of receipt of the list, notify the school owner of any school name that the court intends to remove from the referral list.

(2) Within 60 days of receipt of the list, make every effort to schedule, conduct, and complete a hearing for the school owner, or a representative, if requested, at which the sole issue shall be whether the name violates the standards set forth in subdivision (d). A substitute name may be submitted to the court at the conclusion of the hearing, pursuant to subdivision (h).

(3) Within 10 days of the completion of that hearing, notify the department and school owner of any school names it intends to remove from the referral list.

(f) In order for a court action to delete a school name from the next referral list published by the department, the department shall receive court notification no later than 90 days prior to publication of the next referral list and, absent a direct order by the appellate division of the superior court or a court of higher jurisdiction, the department shall not fail to publish a referral list on the grounds that there exists pending litigation or appeals concerning the lists.

(g) Any court notifying the department of a school name it intends to remove from the list, pursuant to this section, shall provide the school owner with the name of the judge making those findings.

(h) When a court informs a school owner, pursuant to subdivision (e), of its decision to delete the name of a traffic violator school from that judicial district's subsection of the department's traffic violator school referral list, the owner may, on a form approved by the department, submit a substitute name to the court and request approval of that name. The court shall, within 30 days of receipt of the request for approval of the substitute name, inform the department and the school owner, on a form approved by the department, of its approval or rejection of the substitute name. The school owner may continue this appeal process for approval of a substitute name until the court determines that the name does not violate the standard set forth in subdivision (d). A name approval in a judicial district shall not affect the school's name or listing in any other district in the state. The department shall not impose any fee or license requirement under this subdivision.

(i) If a court fails to act within 30 days on a request of a traffic violator school owner, pursuant to subdivision (h), the proposed substitute name shall be deemed approved by the court for the purposes of the traffic violator school referral list.

(j) (1) Every application filed with the department on and after June 1, 1991, for an original license by a traffic school owner or for approval to conduct classes in a judicial district not previously approved, shall be accompanied by the approval of the court in each judicial district proposed for those operations of the name of the school, on a form approved by the department for that purpose. For the approved name to be included in the traffic violator school referral list, the form shall be received by the department no later than 90 days prior to publication.

(2) When a court disapproves a school name pursuant to this subdivision, the court shall notify the school owner within 30 days of its disapproval and schedule a hearing for that school owner, or a representative, if requested, at which the sole issue shall be whether the name violates the standards set forth in subdivision (d). A substitute name may be submitted to the court at the conclusion of the hearing, pursuant to subdivision (h).

(3) The court shall make every effort to schedule, conduct, and complete a hearing within 60 days of receipt of the school owner's request for a school name approval. A name approval in a judicial district shall not affect the school's name or listing in any other district in the state. A change in physical location by a school within a judicial district shall not require approval pursuant to this subdivision.

(k) The department shall publish a list of the owners of traffic violator schools. One copy shall be provided to each municipal court in the state, and to each superior court in a county in which there is no municipal court. This list shall be revised at least twice annually and transmitted to the courts by the first day of January and the first day of July. This list shall include all of the following:

(1) The name of each school, grouped by owner.

(2) The business office address.

(3) The business office telephone number.

(4) The license number.

(5) The owner's name.

(6) The operator's name.

(*l*) Except as otherwise provided in subdivision (d) of Section 42005, the court shall use either the current list of traffic violator schools published by the department when it orders a person to complete a traffic violator school pursuant to subdivision (a) or (b) of Section 42005 or, when a court utilizing a nonprofit agency for traffic violator school administration and monitoring services in which all traffic violator schools licensed by the department are allowed the opportunity to participate, a statewide referral list may be published by the nonprofit agency and distributed by the court. The agency shall monitor each classroom location situated within the judicial districts in which that agency provides services to the courts and is represented on its referral list. The monitoring shall occur at least once every 90 days with reports forwarded to the department and the respective courts on a monthly basis.

(m) The court may charge a traffic violator a fee to defray the costs incurred by the agency for the monitoring reports and services provided to the court. The court may delegate collection of the fee to the agency. Fees shall be approved and regulated by the court. Until December 31, 1996, the fee shall not exceed the actual cost incurred by the agency or five dollars ($5), whichever is less.

(n) If any provision of subdivision (d) or (e), as added by Section 4 of Assembly Bill 185 of the 1991–92 Regular Session, or the application thereof to any person, is held to be unconstitutional, this section is repealed on the date the decision of the court so holding becomes final.

SEC. 456. Section 11205 of the Vehicle Code, as amended by Section 48.5 of Chapter 571 of the Statutes of 1997, is amended to read:

11205. (a) The department shall publish semiannually, or more often as necessary to serve the purposes of this act, a list of all traffic violator schools which are licensed pursuant to this section. The list

shall identify classroom facilities within a judicial district that are at a different location from a licensed school's principal facility. The department shall transmit the list to each municipal court and to each superior court in a county in which there is no municipal court, with a sufficient number of copies to allow the courts to provide one copy to each person referred to a licensed traffic violator school. The department shall, at least semiannually, revise the list to ensure that each court has a current list of all licensed traffic violator schools.

(b) Each licensed traffic violator school owner shall be permitted one school name per judicial district.

(c) The referral list shall be organized alphabetically, in sections for each county, and contain subsections for each judicial district within the county. The order of the names within each judicial district shall be random pursuant to a drawing or lottery conducted by the department.

(d) Except as otherwise provided in subdivision (d) of Section 42005, the court shall use either the current referral list of traffic violator schools published by the department when it orders a person to complete a traffic violator school pursuant to subdivision (a) or (b) of Section 42005 or, when a court utilizing a nonprofit agency for traffic violator school administration and monitoring services in which all traffic violator schools licensed by the department are allowed the opportunity to participate, a statewide referral list may be published by the nonprofit agency and distributed by the court. The agency shall monitor each classroom location situated within the judicial districts in which that agency provides services to the courts and is represented on its referral list. The monitoring shall occur at least once every 90 days with reports forwarded to the department and the respective courts on a monthly basis.

(e) The court may charge a traffic violator a fee to defray the costs incurred by the agency for the monitoring reports and services provided to the court. The court may delegate collection of the fee to the agency. Fees shall be approved and regulated by the court. Until December 31, 1996, the fee shall not exceed the actual cost incurred by the agency or five dollars ($5), whichever is less.

(f) If any provision of subdivision (d) or (e) of Section 11205, as added by Section 4 of Assembly Bill 185 of the 1991–92 Regular Session, or the application thereof to any person, is held to be unconstitutional, that Section 11205 is repealed on the date the decision of the court so holding becomes final, and on that date, this section shall become operative.

SEC. 457. 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 juvenile, municipal, or superior 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. A proceeding in the civil case is a limited civil case.

(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 in the regular course of business conducts sales of repossessed or surrendered motor vehicles may take possession and conduct the sale of the forfeited vehicle if it 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 by the legal owner 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 (i).

(h) If 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.

SEC. 457.5. 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 juvenile, municipal, or superior 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. A proceeding in the civil case is a limited civil case.

(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 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. 458. Section 27360 of the Vehicle Code is amended to read:

27360. (a) No parent or legal guardian, when present in a motor vehicle, as defined in Section 27315, shall permit his or her child or ward under the age of four years, regardless of weight, or weighing less than 40 pounds, regardless of age, to be transported upon a highway in the motor vehicle without providing and properly using, for each child or ward, a child passenger restraint system meeting applicable federal motor vehicle safety standards.

(b) No driver shall transport on a highway any child under four years of age, regardless of weight, or weighing less than 40 pounds, regardless of age, in a motor vehicle, as defined in Section 27315, without providing and properly securing the child in a child passenger restraint system meeting applicable federal motor vehicle safety standards. This subdivision does not apply to a driver if the parent or legal guardian of the child is also present in the vehicle and is not the driver.

(c) (1) A first offense under this section is punishable by a fine of one hundred dollars ($100), except that the court may waive the fine if the defendant establishes to the satisfaction of the court that he or she is economically disadvantaged and the court, instead, refers the defendant to a child passenger restraint low-cost purchase or loaner program. If the fine is waived, the court shall nevertheless report the conviction to the department pursuant to Section 1803.

(2) A second or subsequent offense under this section is punishable by a fine of one hundred dollars ($100), no part of which may be waived by the court.

(d) Notwithstanding any other provision of law, the fines collected for a violation of this section shall be allocated as follows:

(1) Sixty percent to county health departments where the violation occurred, to be used for a child passenger restraint low-cost purchase or loaner program that shall include, but not be limited to, education on the proper installation and use of a child passenger restraint system. The county health department shall designate a coordinator to facilitate the creation of a special account and to develop a relationship with the court system to facilitate the transfer of funds to the program. The county may contract for the implementation of the program. Prior to obtaining possession of a child passenger restraint system pursuant to this section, a person shall receive information relating to the importance of utilizing that system.

As the proceeds from fines become available, county health departments shall prepare and maintain a listing of all child passenger restraint low-cost purchase or loaner programs in their counties, including a semiannual verification that all programs listed are in existence. Each county shall forward the listing to the Office of Traffic Safety in the Business, Transportation and Housing Agency

and the courts, birthing centers, community child health and disability prevention programs, county clinics, prenatal clinics, women, infants, and children programs, and county hospitals in that county, who shall make the listing available to the public. The Office of Traffic Safety shall maintain a listing of all of the programs in the state.

(2) Twenty-five percent to the county for the administration of the program.

(3) Fifteen percent to the city, to be deposited in its general fund except that, if the violation occurred in an unincorporated area, this amount shall be allocated to the county for purposes of paragraph (1).

SEC. 459. Section 40230 of the Vehicle Code is amended to read:

40230. (a) Within 30 calendar days after the mailing or personal delivery of the final decision described in subdivision (b) of Section 40215, the contestant may seek review by filing an appeal to be heard by the municipal court, or by the superior court in a county in which there is no municipal court, where the same shall be heard de novo, except that the contents of the processing agency's file in the case shall be received in evidence. A copy of the notice of parking violation or, if the citation was issued electronically, a true and correct abstract containing the information set forth in the notice of parking violation shall be admitted into evidence as prima facie evidence of the facts stated therein. A copy of the notice of appeal shall be served in person or by first-class mail upon the processing agency by the contestant. For purposes of computing the 30-calendar-day period, Section 1013 of the Code of Civil Procedure shall be applicable. A proceeding under this subdivision is a limited civil case.

(b) The fee for filing the notice of appeal is twenty-five dollars ($25). The court shall request that the processing agency's file on the case be forwarded to the court, to be received within 15 calendar days of the request. The court shall notify the contestant of the appearance date by mail or personal delivery. The court shall retain the twenty-five dollar ($25) fee regardless of the outcome of the appeal. If the court finds in favor of the contestant, the amount of the fee shall be reimbursed to the contestant by the processing agency. Any deposit of parking penalty shall be refunded by the processing agency in accordance with the judgment of the court.

(c) The conduct of the appeal under this section is a subordinate judicial duty that may be performed by traffic trial commissioners and other subordinate judicial officials at the direction of the presiding judge of the court.

(d) If no notice of appeal of the processing agency's decision is filed within the period set forth in subdivision (a), the decision shall be deemed final.

(e) If the parking penalty has not been deposited and the decision is against the contestant, the processing agency shall, after the

decision becomes final, proceed to collect the penalty pursuant to Section 40220.

SEC. 460. Section 40256 of the Vehicle Code is amended to read:

40256. (a) Within 20 days after the mailing of the final decision described in subdivision (b) of Section 40255, the contestant may seek review by filing an appeal to the municipal court, or to the superior court in a county in which there is no municipal court, where the same shall be heard de novo, except that the contents of the processing agency's file in the case on appeal shall be received in evidence. A copy of the notice of toll evasion violation shall be admitted into evidence as prima facie evidence of the facts stated therein. A copy of the notice of appeal shall be served in person or by first-class mail upon the processing agency by the contestant. For purposes of computing the 20-day period, Section 1013 of the Code of Civil Procedure shall be applicable. A proceeding under this subdivision is a limited civil case.

(b) The fee for filing the notice of appeal shall be twenty-five dollars ($25). If the appellant prevails, this fee, together with any deposit of toll evasion penalty, shall be promptly refunded by the processing agency in accordance with the judgment of the court.

(c) The conduct of the hearing on appeal under this section is a subordinate judicial duty which may be performed by commissioners and other subordinate judicial officials at the direction of the presiding judge of the court.

(d) If no notice of appeal of the processing agency's decision is filed within the period set forth in subdivision (a), the decision shall be deemed final.

(e) If the toll evasion penalty has not been deposited and the decision is adverse to the contestant, the processing agency may, promptly after the decision becomes final, proceed to collect the penalty under Section 40267.

SEC. 461. Section 40502 of the Vehicle Code is amended to read:

40502. The place specified in the notice to appear shall be any of the following:

(a) Before a magistrate within the county in which the offense charged is alleged to have been committed and who has jurisdiction of the offense and is nearest or most accessible with reference to the place where the arrest is made.

(b) Upon demand of the person arrested, before a judge or other magistrate having jurisdiction of the offense at the county seat of the county in which the offense is alleged to have been committed. This subdivision applies only if the person arrested resides, or the person's principal place of employment is located, closer to the county seat than to the court or other magistrate nearest or most accessible to the place where the arrest is made.

(c) Before a person authorized to receive a deposit of bail.

The clerk and deputy clerks of the municipal court or of the superior court in a county in which there is no municipal court are

persons authorized to receive bail in accordance with a schedule of bail approved by the judges of those courts.

(d) Before the juvenile court, a juvenile court referee, or a juvenile traffic hearing officer within the county in which the offense charged is alleged to have been committed, if the person arrested appears to be under the age of 18 years. The juvenile court shall by order designate the proper person before whom the appearance is to be made.

In a county that has implemented the provisions of Section 603.5 of the Welfare and Institutions Code, if the offense alleged to have been committed by a minor is classified as an infraction under this code, or is a violation of a local ordinance involving the driving, parking, or operation of a motor vehicle, the citation shall be issued as provided in subdivision (a), (b), or (c); provided, however, that if the citation combines an infraction and a misdemeanor, the place specified shall be as provided in subdivision (d).

If the place specified in the notice to appear is within a judicial district or city and county where a department of the municipal court, or of the superior court in a county in which there is no municipal court, is to hold a night session within a period of not more than 10 days after the arrest, the notice to appear shall contain, in addition to the above, a statement notifying the person arrested that the person may appear before such a night session of the court.

SEC. 462. Section 40506.5 of the Vehicle Code is amended to read:

40506.5. Prior to the date upon which the defendant promised to appear and without depositing bail, the defendant may request a continuance of the written promise to appear. The judge of a municipal court or of a superior court in a county in which there is no municipal court may authorize the clerk to grant the continuance.

SEC. 463. Section 40508.6 of the Vehicle Code is amended to read:

40508.6. The Legislature hereby authorizes the establishment of the following program, to be implemented in any county, upon the adoption of a resolution by the board of supervisors authorizing it. For the superior court and each municipal court district in the county, a board of supervisors may establish administrative assessments, not to exceed ten dollars ($10), for clerical and administrative costs incurred for the following activities:

(a) An assessment for the cost of recording and maintaining a record of the defendant's prior convictions for violations of this code. The assessment shall be payable at the time of payment of a fine or when bail is forfeited for any subsequent violations of this code other than parking, pedestrian, or bicycle violations.

(b) An assessment for all defendants whose driver's license or automobile registration is attached or restricted pursuant to Section 40509 or 40509.5, to cover the cost of notifying the Department of Motor Vehicles of the attachment or restriction.

SEC. 464. Section 42008 of the Vehicle Code is amended to read:

42008. (a) Any county may operate an amnesty program for delinquent fines and bail imposed for an infraction or misdemeanor violation of the Vehicle Code, except parking violations of the Vehicle Code and violations of Section 23103, 23104, 23152, or 23153. The program shall be implemented by the courts in accordance with Judicial Council guidelines, and shall apply to infraction or misdemeanor violations of the Vehicle Code, except parking violations, upon which a fine or bail was delinquent on or before April 1, 1991.

(b) Under the amnesty program, any person owing a fine or bail due on or before April 1, 1991, that was imposed for an infraction or misdemeanor violation of the Vehicle Code, except violations of Section 23103, 23104, 23152, or 23153 or parking violations, may pay to the municipal court or to the superior court in a county in which there is no municipal court the amount scheduled by the court, which shall be either (1) 70 percent of the total fine or bail or (2) the amount of one hundred dollars ($100) for an infraction or five hundred dollars ($500) for a misdemeanor. This amount shall be accepted by the court in full satisfaction of the delinquent fine or bail.

(c) No criminal action shall be brought against any person for a delinquent fine or bail paid under this amnesty program and no other additional penalties shall be assessed for the late payment of the fine or bail made under the amnesty program.

(d) Notwithstanding Section 1463 of the Penal Code, the total amount of funds collected by the courts pursuant to the amnesty program created by this section shall be deposited in the county treasury.

SEC. 465. Section 42203 of the Vehicle Code is amended to read:

42203. Notwithstanding Section 42201 or 42201.5, 50 percent of all fines and forfeitures collected in a municipal court, or in a superior court in a county in which there is no municipal court, upon conviction or upon the forfeiture of bail for violations of any provisions of the Vehicle Code, or of any local ordinance or resolution, relating to stopping, standing, or parking a vehicle, that have occurred upon the premises of facilities physically located in such county, but which are owned by another county, which other county furnishes law enforcement personnel for the premises, shall be transmitted pursuant to this section to the county which owns the facilities upon which the violations occurred. The court receiving such moneys shall, once each month, transmit such moneys received in the preceding month to the county treasurer of the county in which the court is located. Once each month in which the county treasurer receives such moneys, the county treasurer shall transmit to the county which owns such facilities an amount equal to 50 percent thereof. The county owning such facilities shall, upon receipt of such moneys from the municipal court or superior court of the county in which the facilities are physically located, deposit such moneys in its county treasury for use solely in meeting traffic control

and law enforcement expenses on the premises upon which the violations occurred.

This section shall not apply when the county in which such facilities are located performs all law enforcement functions with respect to such facilities.

SEC. 466. Section 310 of the Water Code is amended to read:

310. All prosecutions for the violation of any of the provisions of this article shall be instituted in the municipal court of the county in which the well is situated, or in the superior court in a county in which there is no municipal court.

SEC. 467. Section 1100 of the Water Code is amended to read:

1100. The board or any party to a proceeding before it may, in any investigation or hearing, cause the deposition of witnesses residing within or without the state to be taken in the manner prescribed by law for depositions in civil actions in the superior courts of this state under Article 3 (commencing with Section 2016) of Chapter 3 of Title 4 of Part 4 of the Code of Civil Procedure.

SEC. 468. Section 245 of the Welfare and Institutions Code is amended to read:

245. Each superior court shall exercise the jurisdiction conferred by this chapter, and while sitting in the exercise of such jurisdiction, shall be known and referred to as the juvenile court. Appealable orders and judgments of the juvenile court are subject to the appellate jurisdiction of the court of appeal.

SEC. 469. Section 255 of the Welfare and Institutions Code is amended to read:

255. The judge of the juvenile court, or in counties having more than one judge of the juvenile court the presiding judge of the juvenile court or the senior judge if there is no presiding judge, may appoint one or more persons of suitable experience, who may be judges of the municipal court, or of the superior court in a county in which there is no municipal court, or a probation officer or assistant or deputy probation officers, to serve as juvenile hearing officers on a full-time or part-time basis. A hearing officer shall serve at the pleasure of the appointing judge, and unless the appointing judge makes his or her order terminating the appointment of a hearing officer, the hearing officer shall continue to serve until the appointment of his or her successor. The board of supervisors shall determine whether any compensation shall be paid to hearing officers, not otherwise employed by a public agency or holding another public office, and shall establish the amounts and rates thereof. An appointment of a probation officer, assistant probation officer, or deputy probation officer as a juvenile hearing officer may be made only with the consent of the probation officer. A juvenile court shall be known as the Informal Juvenile and Traffic Court when a hearing officer appointed pursuant to this section hears a case specified in Section 256.

SEC. 470. Section 601.4 of the Welfare and Institutions Code is amended to read:

601.4. (a) The juvenile court judge may be assigned to sit as a municipal court judge, or as a superior court judge in a county in which there is no municipal court, to hear any complaint alleging that a parent, guardian, or other person having control or charge of a minor has violated Section 48293 of the Education Code. The jurisdiction of the juvenile court granted by this section shall not be exclusive and the charge may be prosecuted instead in a municipal court, or in a superior court in a county in which there is no municipal court. However, upon motion, that action shall be transferred to the juvenile court.

(b) Notwithstanding Section 737 of the Penal Code, a violation of Section 48293 of the Education Code may be prosecuted pursuant to subdivision (a), by written complaint filed in the same manner as an infraction may be prosecuted. The juvenile court judge, sitting as a municipal court judge or as a superior court judge in a county in which there is no municipal court, may coordinate the action involving the minor with any action involving the parent, guardian, or other person having control or charge of the minor. Both matters may be heard and decided at the same time unless the parent, guardian, other person having control or charge of the minor, or any member of the press or public objects to a closed hearing of the proceedings charging violation of Section 48293 of the Education Code.

SEC. 471. Section 603.5 of the Welfare and Institutions Code is amended to read:

603.5. (a) Notwithstanding any other provision of law, in counties which adopt the provisions of this section, jurisdiction over the case of a minor alleged to have committed only a violation of the Vehicle Code classified as an infraction or a violation of a local ordinance involving the driving, parking, or operation of a motor vehicle, is with the municipal court or the superior court in a county in which there is no municipal court, except that the court may refer to the juvenile court for adjudication, cases involving a minor who has been adjudicated a ward of the juvenile court, or who has other matters pending in the juvenile court.

(b) The cases specified in subdivision (a) shall not be governed by the procedures set forth in the juvenile court law.

(c) Any provisions of juvenile court law requiring that confidentiality be observed as to cases and proceedings, prohibiting or restricting the disclosure of juvenile court records, or restricting attendance by the public at juvenile court proceedings shall not apply. The procedures for bail specified in Chapter 1 (commencing with Section 1268) of Title 10 of Part 2 of the Penal Code shall apply.

(d) The provisions of this section shall apply in a county in which the board of supervisors, with the concurrence of the presiding judges of the superior, juvenile, and any municipal courts, adopts a

resolution making the section applicable in the county as to any matters to be heard by the municipal or superior court pursuant to this section, or in which a trial court coordination plan has been approved by the Judicial Council pursuant to Section 68112 of the Government Code that provides for the coordination of matters pursuant to this section.

SEC. 472. Section 656 of the Welfare and Institutions Code is amended to read:

656. A petition to commence proceedings in the juvenile court to declare a minor a ward of the court shall be verified and shall contain all of the following:

(a) The name of the court to which it is addressed.

(b) The title of the proceeding.

(c) The code section and subdivision under which the proceedings are instituted.

(d) The name, age, and address, if any, of the minor upon whose behalf the petition is brought.

(e) The names and residence addresses, if known to the petitioner, of both of the parents and any guardian of the minor. If there is no parent or guardian residing within the state, or if his or her place of residence is not known to the petitioner, the petition shall also contain the name and residence address, if known, of any adult relative residing within the county, or, if there are none, the adult relative residing nearest to the location of the court.

(f) A concise statement of facts, separately stated, to support the conclusion that the minor upon whose behalf the petition is being brought is a person within the definition of each of the sections and subdivisions under which the proceedings are being instituted.

(g) The fact that the minor upon whose behalf the petition is brought is detained in custody or is not detained in custody, and if he or she is detained in custody, the date and the precise time the minor was taken into custody.

(h) A notice to the father, mother, spouse, or other person liable for support of the minor child, that: (1) Section 903 may make that person, the estate of that person, and the estate of the minor child, liable for the cost of the care, support, and maintenance of the minor child in any county institution or any other place in which the child is placed, detained, or committed pursuant to an order of the juvenile court; (2) Section 903.1 may make that person, the estate of that person, and the estate of the minor child, liable for the cost to the county of legal services rendered to the minor by a private attorney or a public defender appointed pursuant to the order of the juvenile court; (3) Section 903.2 may make that person, the estate of that person, and the estate of the minor child, liable for the cost to the county of the probation supervision of the minor child by the probation officer pursuant to the order of the juvenile court; and (4) the liabilities established by these sections are joint and several.

(i) In a proceeding alleging that the minor comes within Section 601, notice to the parent, guardian, or other person having control or charge of the minor that failure to comply with the compulsory school attendance laws is an infraction, which may be charged and prosecuted before the juvenile court judge sitting as a municipal court judge or as a superior court judge in a county in which there is no municipal court. In those cases, the petition shall also include notice that the parent, guardian, or other person having control or charge of the minor has the right to a hearing on the infraction before a judge different than the judge who has heard or is to hear the proceeding pursuant to Section 601. The notice shall explain the provisions of Section 170.6 of the Code of Civil Procedure.

(j) If a proceeding is pending against a minor child for a violation of Section 594.2, 640.5, 640.6, or 640.7 of the Penal Code, a notice to the parent or legal guardian of the minor that if the minor is found to have violated either or both of these provisions that (1) any community service which may be required of the minor may be performed in the presence, and under the direct supervision, of the parent or legal guardian pursuant to either or both of these provisions, and (2) if the minor is personally unable to pay any fine levied for the violation of either or both of these provisions, that the parent or legal guardian of the minor shall be liable for payment of the fine pursuant to those sections.

(k) A notice to the parent or guardian of the minor that if the minor is ordered to make restitution to the victim pursuant to Section 729.6, as operative on or before August 2, 1995, Section 731.1, as operative on or before August 2, 1995, or Section 730.6, or to pay fines or penalty assessments, the parent or guardian may be liable for the payment of restitution, fines, or penalty assessments.

SEC. 473. Section 661 of the Welfare and Institutions Code is amended to read:

661. In addition to the notice provided in Sections 658 and 659, the juvenile court may issue its citation directing any parent, guardian, or foster parent of the person concerning whom a petition has been filed to appear at the time and place set for any hearing or financial evaluation under the provisions of this chapter, including a hearing under the provisions of Section 257, and directing any person having custody or control of the minor concerning whom the petition has been filed to bring the minor with him or her. The notice shall in addition state that a parent, guardian, or foster parent may be required to participate in a counseling or education program with the minor concerning whom the petition has been filed. If the proceeding is one alleging that the minor comes within the provisions of Section 601, the notice shall in addition contain notice to the parent, guardian, or other person having control or charge of the minor that failure to comply with the compulsory school attendance laws is an infraction, which may be charged and prosecuted before the juvenile court judge sitting as a municipal court judge or as a

superior court judge in a county in which there is no municipal court. In those cases, the notice shall also include notice that the parent, guardian, or other person having control or charge of the minor has the right to a hearing on the infraction before a judge different than the judge who has heard or is to hear the proceeding pursuant to Section 601. The notice shall explain the provisions of Section 170.6 of the Code of Civil Procedure. Personal service of the citation shall be made at least 24 hours before the time stated therein for the appearance.

SEC. 474. Section 742.16 of the Welfare and Institutions Code is amended to read:

742.16. (a) If a minor is found to be a person described in Section 602 by reason of the commission of an act prohibited by Section 594, 594.3, 594.4, 640.5, 640.6 or 640.7 of the Penal Code, and the court does not remove the minor from the physical custody of the parent or guardian, the court as a condition of probation, except in any case in which the court makes a finding and states on the record its reasons why that condition would be inappropriate, shall require the minor to wash, paint, repair, or replace the property defaced, damaged, or destroyed by the minor or otherwise pay restitution to the probation officer of the county for disbursement to the owner or possessor of the property or both. In any case in which the minor is not granted probation or in which the minor's cleanup, repair, or replacement of the property will not return the property to its condition before it was defaced, damaged, or destroyed, the court shall make a finding of the amount of restitution that would be required to fully compensate the owner and possessor of the property for their damages. The court shall order the minor or the minor's estate to pay that restitution to the probation officer of the county for disbursement to the owner or possessor of the property or both, to the extent the court determines that the minor or the minor's estate have the ability to do so, except in any case in which the court makes a finding and states on the record its reasons why full restitution would be inappropriate. If full restitution is found to be inappropriate, the court shall require the minor to perform specified community service, except in any case in which the court makes a finding and states on the record its reasons why that condition would be inappropriate.

(b) If a minor is found to be a person described in Section 602 by reason of the commission of an act prohibited by Section 594, 594.3, 594.4, 640.5, 640.6, or 640.7 of the Penal Code, and the graffiti or other material inscribed by the minor has been removed, or the property defaced by the minor has been repaired or replaced by a public entity that has elected, pursuant to Section 742.14, to have the probation officer of the county recoup its costs through proceedings in accordance with this section and has made cost findings in accordance with subdivisions (c) or (d) of Section 742.14, the court shall determine the total cost incurred by the public entity for said removal, repair, or replacement, using, if applicable, the cost findings

most recently adopted by the public entity pursuant to subdivision (c) or (d) of Section 742.14. The court shall order the minor or the minor's estate to pay those costs to the probation officer of the county to the extent the court determines that the minor or the minor's estate have the ability to do so.

(c) If the minor is found to be a person described in Section 602 by reason of the commission of an act prohibited by Section 594, 594.3, 594.4, 640.5, 640.6, or 640.7 of the Penal Code and the minor was identified or apprehended by the law enforcement agency of a city or county that has elected, pursuant to Section 742.14, to have the probation officer of the county recoup its costs through proceedings in accordance with this section, the court shall determine the cost of identifying or apprehending the minor, or both, using, if applicable, the cost findings adopted by the city or county pursuant to subdivision (b) of Section 742.14. The court shall order the minor or the minor's estate to pay those costs to the probation officer of the county to the extent the court determines that the minor or the minor's estate have the ability to do so.

(d) If the court determines that the minor or the minor's estate is unable to pay in full the costs and damages determined pursuant to subdivisions (a), (b), and (c), and if the minor's parent or parents have been cited into court pursuant to Section 742.18, the court shall hold a hearing to determine the liability of the minor's parent or parents pursuant to Section 1714.1 of the Civil Code for those costs and damages. Except when the court makes a finding setting forth unusual circumstances in which parental liability would not serve the interests of justice, the court shall order the minor's parent or parents to pay those costs and damages to the probation officer of the county to the extent the court determines that the parent or parents have the ability to pay, if the minor was in the custody or control of the parent or parents at the time he or she committed the act that forms the basis for the finding that the minor is a person described in Section 602. In evaluating the parent's or parents' ability to pay, the court shall take into consideration the family income, the necessary obligations of the family, and the number of persons dependent upon this income.

(e) The hearing described in subdivision (d) may be held immediately following the disposition hearing or at a later date, at the option of the court.

(f) If the amount of costs and damages sought to be recovered in the hearing pursuant to subdivision (d) is five thousand dollars ($5,000) or less, the parent or parents may not be represented by counsel and the probation officer of the county shall be represented by his or her nonattorney designee. The court shall conduct such a hearing in accordance with Sections 116.510 and 116.520 of the Code of Civil Procedure. Notwithstanding the foregoing, if the court determines that a parent cannot properly present his or her defense, the court may, in its discretion, allow another individual to assist that

parent. In addition, a husband or wife may appear and participate in the hearing on behalf of his or her spouse if the representative's spouse has given his or her consent and the court determines that the interest of justice would be served thereby.

(g) If the amount of costs and damages sought to be recovered in the hearing pursuant to subdivision (d) exceeds five thousand dollars ($5,000), the parent or parents may be represented by counsel of his or her or their own choosing, and the probation officer of the county shall be represented by the district attorney or an attorney or nonattorney designee of the probation officer. The parent or parents shall not be entitled to court-appointed counsel or to counsel compensated at public expense.

(h) At the hearing conducted pursuant to subdivision (d), there shall be a presumption affecting the burden of proof that the findings of the court made pursuant to subdivisions (a), (b), and (c) represent the actual damages and costs attributable to the act of the minor that forms the basis of the finding that the minor is a person described in Section 602.

(i) If the parent or parents, after having been cited to appear pursuant to Section 742.18, fail to appear as ordered, the court shall order the parent or parents to pay the full amount of the costs and damages determined by the court pursuant to subdivisions (a), (b), and (c).

(j) Execution may be issued on an order issued by the court pursuant to this section in the same manner as on a judgment in a civil action, including any balance unpaid at the termination of the court's jurisdiction over the minor.

(k) At any time prior to the satisfaction of a judgment entered pursuant to this section, a person against whom the judgment was entered may petition the rendering court to modify or vacate the judgment on the showing of a change in circumstances relating to his or her ability to pay the judgment.

(*l*) For purposes of a hearing conducted pursuant to subdivision (d), the judge of the juvenile court shall have the jurisdiction of a judge of the municipal court or of the superior court in a limited civil case, and where the amount of the demand is five thousand dollars ($5,000) or less, the judge of the juvenile court shall have the powers of a judge presiding over the small claims court.

(m) Nothing in this section shall be construed to limit the authority of a juvenile court to provide conditions of probation.

(n) The options available to the court pursuant to subdivisions (a), (b), (c), (d), and (k), to order payment by the minor and his or her parent or parents of less than the full costs described in subdivisions (a), (b), and (c), on grounds of financial inability or for reasons of justice, shall not be available to a municipal court in an ordinary civil proceeding pursuant to subdivision (b) of Section 1714.1 of the Civil Code, except that in any proceeding pursuant to either subdivision (b) of Section 1714.1 of the Civil Code or this section, the maximum

amount that a parent or a minor may be ordered to pay shall not exceed twenty thousand dollars ($20,000) for each tort of the minor.

SEC. 475. Section 3050 of the Welfare and Institutions Code is amended to read:

3050. Upon conviction of a defendant of a misdemeanor or infraction or following revocation of probation previously granted for a misdemeanor or infraction, whether or not sentence has been imposed, if it appears to the judge that the defendant may be addicted or by reason of repeated use of narcotics may be in imminent danger of becoming addicted to narcotics, such judge shall adjourn the proceedings or suspend the imposition or execution of the sentence, certify the defendant to the superior court and order the district attorney to file a petition for a commitment of the defendant to the Director of Corrections for confinement in the narcotic detention, treatment and rehabilitation facility.

Upon the filing of such a petition, the superior court shall order the defendant to be examined by one physician. At the request of the defendant, the court shall order the defendant to be examined by a second physician. At least one day before the time of the examination as fixed by the court order, a copy of the petition and order for examination shall be personally delivered to the defendant. A written report of the examination by the physician or physicians shall be delivered to the court, and if the report is to the effect that the person is not addicted nor in imminent danger of addiction, it shall so certify and return the defendant to the court which certified such defendant to the superior court for such further proceedings as the judge of such court deems warranted. If the report is to the effect that the defendant is addicted or is by reason of the repeated use of narcotics in imminent danger of addiction, further proceedings shall be conducted in compliance with Sections 3104, 3105, 3106, and 3107.

If, after a hearing, the judge finds that the defendant is a narcotic addict, or is by reason of the repeated use of narcotics in imminent danger of becoming addicted thereto, and is not ineligible for the program under the application of Section 3052, he or she shall make an order committing such defendant to the custody of the Director of Corrections for confinement in the facility until such time as he or she is discharged pursuant to Article 5 (commencing with Section 3200), except as this chapter permits earlier discharge. If, upon the hearing, the judge shall find that the defendant is not a narcotic addict and is not in imminent danger of becoming addicted to narcotics, the judge shall so certify and return the defendant to the court which certified the defendant to the superior court for such further proceedings as the judge of the court which certified the defendant to the superior court deems warranted.

If a person committed pursuant to this section is dissatisfied with the order of commitment, he or she may within 10 days after the making of such order, file a written demand for a jury trial in compliance with Section 3108.

SEC. 476. Section 3051 of the Welfare and Institutions Code is amended to read:

3051. Upon conviction of a defendant for a felony, or following revocation of probation previously granted for a felony, and upon imposition of sentence, if it appears to the judge that the defendant may be addicted or by reason of repeated use of narcotics may be in imminent danger of becoming addicted to narcotics the judge shall suspend the execution of the sentence and order the district attorney to file a petition for commitment of the defendant to the Director of Corrections for confinement in the narcotic detention, treatment, and rehabilitation facility unless, in the opinion of the judge, the defendant's record and probation report indicate such a pattern of criminality that he or she does not constitute a fit subject for commitment under this section.

Upon the filing of the petition, the court shall order the defendant to be examined by one physician. However, the examination may be waived by a defendant if the defendant has been examined in accordance with Section 1203.03 of the Penal Code and that examination encompassed whether defendant is addicted or is in imminent danger of addiction, and if the defendant is represented by counsel and competent to understand the effect of the waiver. In cases where a physician's report is waived by the defendant, the Department of Corrections may perform an evaluation and provide a report as to the defendant's addiction or imminent danger of addiction. If the Department of Corrections determines that the defendant is not addicted or in imminent danger of addiction, the defendant shall be returned to the sentencing court for resentencing. The examination may also be waived upon stipulation by the defendant, his or her attorney, the prosecutor, and the court that the defendant is addicted or is in imminent danger of addiction. If a physician's report is prepared, at the request of the defendant, the court shall order the defendant to be examined by a second physician. At least one day before the time of the examination as fixed by the court order, a copy of the petition and order for examination shall be personally delivered to the defendant. A written report of the examination by the physician or physicians shall be delivered to the court, and if the report is to the effect that the person is not addicted nor in imminent danger of addiction, it shall so certify and return the defendant to the department of the superior court that directed the filing of the petition for the ordering of the execution of the sentence. The court may, unless otherwise prohibited by law, modify the sentence or suspend the imposition of the sentence. If the report is to the effect that the defendant is addicted or is by reason of the repeated use of narcotics in imminent danger of addiction, further proceedings shall be conducted in compliance with Sections 3104, 3105, 3106, and 3107.

If, after a hearing, the judge finds that the defendant is a narcotic addict, or is by reason of the repeated use of narcotics in imminent

danger of becoming addicted to narcotics, the judge shall make an order committing the person to the custody of the Director of Corrections for confinement in the facility until a time that he or she is discharged pursuant to Article 5 (commencing with Section 3200), except as this chapter permits earlier discharge. If, upon the hearing, the judge finds that the defendant is not a narcotic addict and is not in imminent danger of becoming addicted to narcotics, the judge shall so certify and return the defendant to the department of the superior court that directed the filing of the petition for the ordering of execution of sentence. The court may, unless otherwise prohibited by law, modify the sentence or suspend the imposition of the sentence.

If a person committed pursuant to this section is dissatisfied with the order of commitment, he or she may, within 10 days after the making of the order, file a written demand for a jury trial in compliance with Section 3108.

A psychologist licensed pursuant to Chapter 6.6 (commencing with Section 2900) of Division 2 of the Business and Professions Code may perform the examination specified in this section and Section 3050. This section does not expand the scope of practice of psychologists as set forth in Section 2903 of the Business and Professions Code nor does this section allow a psychologist to perform any activity that would otherwise require a physician's and surgeon's license.

SEC. 477. Section 3200 of the Welfare and Institutions Code is amended to read:

3200. (a) If at any time the Director of Corrections is of the opinion that a person committed pursuant to Article 3 (commencing with Section 3100) while in outpatient status has abstained from the use of narcotics, other than as medically prescribed in a narcotic treatment program pursuant to Section 3154, for at least six consecutive months and has otherwise complied with the conditions of his or her release, the director shall recommend to the Narcotic Addict Evaluation Authority that the person be discharged from the program. If the authority concurs in the opinion of the director, it shall discharge the person from the program.

(b) If at any time the director is of the opinion that a person committed for a period of 24 months, or less, pursuant to Article 2 (commencing with Section 3050) while in outpatient status has abstained from the use of narcotics, other than as medically prescribed in a narcotic treatment program pursuant to Section 3154, for at least 12 consecutive months and has otherwise complied with the conditions of his or her release, or if at any time the director is of the opinion that a person committed for a period of more than 24 months pursuant to Article 2 (commencing with Section 3050) while in outpatient status has abstained from the use of narcotics, other than as medically prescribed in a narcotic treatment program pursuant to Section 3154, for at least 16 consecutive months and has

otherwise complied with the conditions of his or her release, the director shall so advise the Narcotic Addict Evaluation Authority. If the authority concurs in the opinion of the director, it shall file with the superior court of the county in which the person was committed a certificate alleging those facts and recommending to the court the discharge of the person from the program. The authority shall serve a copy of the certificate upon the district attorney of the county. Upon the filing of the certificate, the court shall discharge the person from the program. The court may, unless otherwise prohibited by law, modify the sentence, dismiss the criminal charges of which the person was convicted, or suspend further proceedings, as it deems warranted in the interests of justice. Where the person was certified to the superior court pursuant to Section 3050 the person shall be returned to the court that certified the person, which may dismiss the original charges. In any case where the criminal charges are not dismissed and the person is sentenced thereon, time served in custody while under commitment pursuant to Article 2 (commencing with Section 3050) shall be credited on the sentence. The dismissal shall have the same force and effect as a dismissal under Section 1203.4 of the Penal Code, except the conviction is a prior conviction for purposes of Division 10 (commencing with Section 11000) of the Health and Safety Code.

SEC. 478. Section 11350.7 of the Welfare and Institutions Code is amended to read:

11350.7. (a) Notwithstanding any other provision of law, if any support obligor is delinquent in the payment of support for at least 30 days and the district attorney is enforcing the support obligation pursuant to Section 11475.1, the district attorney may collect the delinquency or enforce any lien by levy served on all persons having in their possession, or who will have in their possession or under their control, any credits or personal property belonging to the delinquent support obligor, or who owe any debt to the obligor at the time they receive the notice of levy.

(b) A levy may be issued by a district attorney for a support obligation which accrued under a court order or judgment if the obligor had notice of the accrued support arrearage as provided in this section, and did not make a timely request for review.

(c) The notice requirement shall be satisfied by the district attorney sending a statement of support arrearages to the obligor at the obligor's last known address by first-class mail, postage prepaid. The notice shall advise the obligor of the amount of the support arrearage. The notice shall advise the obligor that the obligor may have the arrearage determination reviewed by administrative procedures and state how such a review may be obtained. The notice shall also advise the obligor of his or her right to seek a judicial determination of arrearages pursuant to Section 11350.8 and shall include a form to be filed with the court to request a judicial determination of arrearages. If the obligor requests an administrative

review of the arrearage determination within 20 days from the date the notice was mailed to the obligor, the district attorney shall review the assessment or determination and shall not issue the levy for a disputed amount of support until the administrative review procedure is completed.

(d) If the obligor requests a judicial determination of the arrearages within 20 days from the date the notice was mailed to the obligor, the district attorney shall not issue the levy for a disputed amount of support until the judicial determination is complete.

(e) Any person upon whom a levy has been served having in his or her possession or under his or her control any credits or personal property belonging to the delinquent support obligor or owing any debts to the delinquent support obligor at the time of receipt of the levy or coming into his or her possession or under his or her control within one year of receipt of the notice of levy, shall surrender the credits or personal property to the district attorney or pay to the district attorney the amount of any debt owing the delinquent support obligor within 10 days of service of the levy, and shall surrender the credits or personal property, or the amount of any debt owing to the delinquent support obligor coming into his or her own possession or control within one year of receipt of the notice of levy within 10 days of the date of coming into possession or control of the credits or personal property or the amount of any debt owing to the delinquent support obligor.

(f) Any person who surrenders any credits or personal property or pays the debts owing the delinquent support obligor to the district attorney pursuant to this section shall be discharged from any obligation or liability to the delinquent support obligor to the extent of the amount paid to the district attorney as a result of the levy.

(g) If the levy is made on a deposit or credits or personal property in the possession or under the control of a bank, savings and loan association, or other financial institution as defined by Section 669A(d)(1) of Title 42 of the United States Code, the notice of levy may be delivered or mailed to a centralized location designated by the bank, savings and loan association, or other financial institution pursuant to Section 689.040 of the Code of Civil Procedure.

(h) Any person who is served with a levy pursuant to this section and who fails or refuses to surrender any credits or other personal property or pay any debts owing to the delinquent support obligor shall be liable in his or her own person or estate to the district attorney in an amount equal to the value of the credits or other personal property or in the amount of the levy, up to the amount specified in the levy.

(i) If any amount required to be paid pursuant to a levy under this section is not paid when due, the district attorney may issue a warrant for enforcement of any lien and for the collection of any amount required to be paid to the district attorney under this section. The warrant shall be directed to any sheriff, marshal, or the Department

of the California Highway Patrol and shall have the same force and effect as a writ of execution. The warrant shall be levied and sale made pursuant to it in the manner and with the same force and effect as a levy and sale pursuant to a writ of execution. The district attorney may pay or advance to the levying officer the same fees, commissions, and expenses for his or her services under this section as are provided by law for similar services pursuant to a writ of execution, except for those fees and expenses for which the district attorney is exempt by law from paying. The district attorney, and not the court, shall approve the fees for publication in a newspaper.

(j) The fees, commissions, expenses, and the reasonable costs associated with the sale of property levied upon by warrant or levy pursuant to this section, including, but not limited to, appraisers' fees, auctioneers' fees, and advertising fees are an obligation of the support obligor and may be collected from the obligor by virtue of the warrant or levy or in any other manner as though these items were support payments delinquent for at least 30 days.

SEC. 479. Section 22 of the Protection District Act of 1903, as added by Chapter 201 of the Statutes of 1895, is amended to read:

Sec. 22. When sufficient money is in such Protection District Fund to pay for the property taken and damaged, according to the award of damages made in the report adopted by the board of supervisors, as provided in Section 17 hereof, the clerk of the board of supervisors shall notify the owner, possessor, or occupant of any land or improvement thereon to whom damages shall have been awarded, that such award has been made, and the amount thereof, and that upon such person filing a claim and tendering a conveyance of any property to be taken, such claim will be allowed and such damages paid. Such notice shall be given by depositing such notice in the post office at the county seat of such county, postage prepaid, addressed to such owner, possessor, or occupant, if the name be known. In case the property is unoccupied, and the name of the owners is unknown, or in case such unoccupied property is set down as belonging to unknown owners for the reasons given in Section 14 hereof, such notice shall be delivered to the sheriff, who shall serve the same by posting a copy in a conspicuous place upon the property named in said notice, and indorse a certificate of service upon the original notice, and file the same with the clerk of the board of supervisors.

SEC. 480. Section 4 of the Drainage District Act of 1903, as added by Chapter 238 of the Statutes of 1903, is amended to read:

Sec. 4. The right of appeal from the order to the superior court of the county where the petition is heard, is hereby given to any person interested, who is a party to the record; provided, that if more than one appeal be taken they shall be consolidated and tried together. Such appeal shall be taken within 10 days after the entry of such order upon the minutes of the board of supervisors. The appeal shall be taken and heard in the same manner as other appeals to the

appellate division of the superior court, except as herein otherwise provided. Upon the appeal, the superior court may make and enter its judgment affirming, modifying, or reversing the order appealed from. Within 10 days thereafter, the superior court must cause its remittitur to issue to the board of supervisors, and if said order of the board of supervisors is modified or reversed, the judgment of the superior court and its remittitur shall direct the board of supervisors what order it shall enter. Such remittitur shall be filed by the clerk of the board of supervisors, and at the first regular meeting of the board thereafter, it shall cause to be entered in its minutes the order as directed by the superior court. The appeal herein provided for shall be heard and determined within thirty days from the time of filing the notice of appeal.

SEC. 481. Sections 21.5 of this bill incorporates amendments to Section 77 of the Code of Civil Procedure proposed by both this bill and AB 1094. 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 77 of the Code of Civil Procedure, and (3) this bill is enacted after AB 1094, in which case Section 77 of the Code of Civil Procedure, as amended by Section 21 of this bill, shall remain operative only until the operative date of AB 1094, at which time Section 21.5 of this bill shall become operative.

SEC. 482. Sections 53.5 of this bill incorporates amendments to Section 200 of the Code of Civil Procedure proposed by both this bill and AB 1094. 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 200 of the Code of Civil Procedure, and (3) this bill is enacted after AB 1094, in which case Section 200 of the Code of Civil Procedure, as amended by Section 53 of this bill, shall remain operative only until the operative date of AB 1094, at which time Section 53.5 of this bill shall become operative.

SEC. 483. Sections 54.5 of this bill incorporates amendments to Section 215 of the Code of Civil Procedure proposed by both this bill and AB 2551. 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 215 of the Code of Civil Procedure, and (3) this bill is enacted after AB 2551, in which case Section 215 of the Code of Civil Procedure, as amended by Section 54 of this bill, shall remain operative only until the operative date of AB 2551, at which time Section 54.5 of this bill shall become operative.

SEC. 484. Sections 62.5 of this bill incorporates amendments to Section 395 of the Code of Civil Procedure proposed by both this bill and AB 2134. 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 395 of the

Code of Civil Procedure, and (3) this bill is enacted after AB 2134, in which case Section 395 of the Code of Civil Procedure, as amended by Section 62 of this bill, shall remain operative only until the operative date of AB 2134, at which time Section 62.5 of this bill shall become operative.

SEC. 485. Sections 83.5 of this bill incorporates amendments to Section 631 of the Code of Civil Procedure proposed by both this bill and AB 2551. 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 631 of the Code of Civil Procedure, and (3) this bill is enacted after AB 2551, in which case Section 631 of the Code of Civil Procedure, as amended by Section 83 of this bill, shall remain operative only until the operative date of AB 2551, at which time Section 83.5 of this bill shall become operative.

SEC. 486. Sections 143.5 of this bill incorporates amendments to Section 1785 of the Financial Code proposed by both this bill and AB 2070. 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 1785 of the Financial Code, and (3) this bill is enacted after AB 2070, in which case Section 1785 of the Financial Code, as amended by Section 143 of this bill, shall remain operative only until the operative date of AB 2070, at which time Section 143.5 of this bill shall become operative.

SEC. 487. If SB 1439 is enacted and repeals Section 16154 of the Financial Code, Section 16154 of the Financial Code as amended by Section 147 of this bill shall be repealed on January 1, 1999.

SEC. 488. Section 183.5 of this bill incorporates amendments to Section 12965 of the Government Code proposed by both this bill and AB 310. 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 12965 of the Government Code, and (3) this bill is enacted after AB 310, in which case Section 12965 of the Government Code, as amended by Section 183 of this bill, shall remain operative only until the operative date of AB 310, at which time Section 183.5 of this bill shall become operative.

SEC. 489. Section 201.5 of this bill incorporates amendments to Section 26820.4 of the Government Code proposed by both this bill and SB 1638. 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 26820.4 of the Government Code, and (3) this bill is enacted after SB 1638, in which case Section 26820.4 of the Government Code, as amended by Section 201 of this bill, shall remain operative only until the operative date of SB 1638, at which time Section 201.5 of this bill shall become operative.

SEC. 490. Section 203.5 of this bill incorporates amendments to Section 26826 of the Government Code proposed by both this bill and SB 1638. 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 26826 of the Government Code, and (3) this bill is enacted after SB 1638, in which case Section 26826 of the Government Code, as amended by Section 203 of this bill, shall remain operative only until the operative date of SB 1638, at which time Section 203.5 of this bill shall become operative.

SEC. 491. Section 227.5 of this bill incorporates amendments to Section 68090.7 of the Government Code proposed by this bill, AB 1590, and SB 752. It shall only become operative if (1) both this bill and either AB 1590 or SB 752, or all three bills, are enacted and become effective on or before January 1, 1999, but this bill becomes operative first, (2) the bills enacted all amend Section 68090.7 of the Government Code, and (3) this bill is enacted last, in which case Section 68090.7 of the Government Code, as amended by Section 227 of this bill, shall remain operative only until the operative date of either AB 1590 or SB 752, whichever comes first, at which time Section 227.5 of this bill shall become operative.

SEC. 492. Section 236.5 of this bill incorporates amendments to Section 68152 of the Government Code proposed by both this bill and AB 1094. 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 68152 of the Government Code, and (3) this bill is enacted after AB 1094, in which case Section 68152 of the Government Code, as amended by Section 236 of this bill, shall remain operative only until the operative date of AB 1094, at which time Section 236.5 of this bill shall become operative.

SEC. 493. Section 315.5 of this bill incorporates amendments to Section 72055 of the Government Code proposed by both this bill and SB 1638. 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 72055 of the Government Code, and (3) this bill is enacted after SB 1638, in which case Section 72055 of the Government Code, as amended by Section 315 of this bill, shall remain operative only until the operative date of SB 1638, at which time Section 315.5 of this bill shall become operative.

SEC. 494. Section 316.5 of this bill incorporates amendments to Section 72056 of the Government Code proposed by both this bill and SB 1638. 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 72056 of the Government Code, and (3) this bill is enacted after SB 1638, in which case Section 72056 of the Government Code, as amended by Section

316 of this bill, shall remain operative only until the operative date of SB 1638, at which time Section 316.5 of this bill shall become operative.

SEC. 495. Section 365.5 of this bill incorporates amendments to Section 830.1 of the Penal Code proposed by both this bill and SB 1452. 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 830.1 of the Penal Code, and (3) this bill is enacted after SB 1452, in which case Section 830.1 of the Penal Code, as amended by Section 365 of this bill, shall remain operative only until the operative date of SB 1452, at which time Section 365.5 of this bill shall become operative.

SEC. 496. Section 366.5 of this bill incorporates amendments to Section 832.4 of the Penal Code proposed by both this bill and AB 1211. 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 832.4 of the Penal Code, and (3) this bill is enacted after AB 1211, in which case Section 832.4 of the Penal Code, as amended by Section 366 of this bill, shall remain operative only until the operative date of AB 1211, at which time Section 366.5 of this bill shall become operative.

SEC. 497. Section 388.5 of this bill incorporates amendments to Section 1050 of the Penal Code proposed by both this bill and AB 1754. 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 1050 of the Penal Code, and (3) this bill is enacted after AB 1754, in which case Section 1050 of the Penal Code, as amended by Section 388 of this bill, shall remain operative only until the operative date of AB 1754, at which time Section 388.5 of this bill shall become operative.

SEC. 498. Section 393.3 of this bill incorporates amendments to Section 1203.1 of the Penal Code proposed by both this bill and SB 1608. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, and AB 1927 is not enacted, but this bill becomes operative first, (2) each bill amends Section 1203.1 of the Penal Code, and (3) this bill is enacted after SB 1608, in which case Section 1203.1 of the Penal Code, as amended by Section 393 of this bill, shall remain operative only until the operative date of SB 1608, at which time Section 393.3 of this bill shall become operative, and Sections 393.4 and 393.5 of this act shall not become operative.

SEC. 499. Section 393.4 of this bill incorporates amendments to Section 1203.1 of the Penal Code proposed by both this bill and AB 1927. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, and SB 1608 is not enacted, but this bill becomes operative first, (2) each bill amends Section 1203.1 of the Penal Code, and (3) this bill is enacted after AB 1927, in which case Section 1203.1 of the Penal Code, as amended by

Section 393 of this bill, shall remain operative only until the operative date of AB 1927, at which time Section 393.4 of this bill shall become operative, and Sections 393.3 and 393.5 of this act shall not become operative.

SEC. 500. Section 393.5 of this bill incorporates amendments to Section 1203.1 of the Penal Code proposed by this bill, SB 1608, and AB 1927. 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) each bill amends Section 12034.1 of the Penal Code, and (3) this bill is enacted after SB 1608 and AB 1927, in which case Section 1203.1 of the Penal Code, as amended by Section 393 of this bill, shall remain operative only until the operative date of SB 1608 and AB 1927, at which time Section 393.5 of this bill shall become operative, and Sections 393.3 and 393.4 shall not become operative.

SEC. 501. Section 395.5 of this bill incorporates amendments to Section 1214 of the Penal Code proposed by both this bill and SB 1768. 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 1214 of the Penal Code, and (3) this bill is enacted after SB 1768, in which case Section 1214 of the Penal Code, as amended by Section 395 of this bill, shall remain operative only until the operative date of SB 1768, at which time Section 395.5 of this bill shall become operative.

SEC. 502. Section 399.5 of this bill incorporates amendments to Section 1269b of the Penal Code proposed by 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 1269b of the Penal Code, and (3) this bill is enacted after SB 2168, in which case Section 1269b of the Penal Code, as amended by SB 2168, shall remain operative only until the operative date of this bill, at which time Section 399.5 of this bill shall become operative, and Section 399 of this bill shall not become operative.

SEC. 503. Section 405.5 of this bill incorporates amendments to Section 1382 of the Penal Code proposed by both this bill and SB 1558. 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 1382 of the Penal Code, and (3) this bill is enacted after SB 1558, in which case Section 1382 of the Penal Code, as amended by Section 405 of this bill, shall remain operative only until the operative date of SB 1558, at which time Section 405.5 of this bill shall become operative.

SEC. 504. Section 406.5 of this bill incorporates amendments to Section 1424 of the Penal Code proposed by both this bill and AB 1858. 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 1424 of the Penal Code, and (3) this bill is enacted after AB 1858, in which case Section 1424

of the Penal Code, as amended by Section 406 of this bill, shall remain operative only until the operative date of AB 1858, at which time Section 406.5 of this bill shall become operative.

SEC. 505. Section 424.5 of this bill incorporates amendments to Section 1466 of the Penal Code proposed by both this bill and SB 1850. 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 1466 of the Penal Code, and (3) this bill is enacted after SB 1850, in which case Section 1466 of the Penal Code, as amended by Section 424 of this bill, shall remain operative only until the operative date of SB 1850, at which time Section 424.5 of this bill shall become operative.

SEC. 506. Section 457.5 of this bill incorporates amendments to Section 14607.5 of the Vehicle Code proposed by both this bill and SB 117. 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 14607.5 of the Vehicle Code, and (3) this bill is enacted after SB 117, in which case Section 14607.5 of the Vehicle Code, as amended by Section 457 of this bill, shall remain operative only until the operative date of SB 117, at which time Section 457.5 of this bill shall become operative.

SEC. 507. Nothing in this act is intended to change the extent to which court reporter services or electronic reporting may be used in the courts. It is the intent of this act to provide for court reporter services and electronic reporting in a county in which there is no municipal court to the same extent as otherwise provided by law in a county in which there is a municipal court.

SEC. 508.

SEC. 481. 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:

Senate Constitutional Amendment 4 of the 1995–96 Regular Session of the Legislature, as approved by the voters, changes the appellate jurisdiction of the courts and enables the municipal and superior courts in a county to unify. It is necessary that implementing measures be taken immediately so that an orderly transition of the court system will occur.

CHAPTER 932

An act to amend Sections 6301.1, 8030.2, 8030.4, 8030.6, 8030.8, and 22350 of the Business and Professions Code, to amend Sections 1793.23, 2924c, 2924j, and 2924.3 of the Civil Code, to amend Sections 77, 200, 484.70, 484.350, 569, 701.040, 1005, 1985.3, 1985.6, 2024, 2025, and 2031 of, and to repeal Section 87 of, the Code of Civil Procedure,

to amend Sections 8603, 9501, 9502, and 9504 of the Commercial Code, to amend Sections 8023, 8040, and 8201 of the Elections Code, to amend Sections 400 and 4251 of the Family Code, to amend Sections 21290, 68152, 68511.3, 75050, and 76219 of the Government Code, to amend Sections 33502 and 115800.1 of the Health and Safety Code, to amend Sections 1368 and 11165.8 of the Penal Code, and to amend Section 5 of Chapter 1125 of the Statutes of 1990, relating to civil actions and proceedings, and making an appropriation therefor.

[Approved by Governor September 28, 1998. Filed with Secretary of State September 28, 1998.]

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

SECTION 1. Section 6301.1 of the Business and Professions Code is amended to read:

6301.1. Notwithstanding Section 6301, in San Diego County the board of law library trustees shall be constituted, as follows:

(a) Two judges of the superior court, to be elected by and from judges in the San Diego County Judicial District. Each superior court judge so elected shall serve a three-year term.

(b) Two judges from the municipal courts of the county. The courts may, by joint agreement, determine the pattern of representation on the board. Each municipal court judge so elected shall serve a three-year term.

(c) The board of supervisors shall appoint three attorneys resident in the county to the board of law library trustees, to serve overlapping three-year terms. In order to stagger the three appointments, the board of supervisors shall, in January of 1997, appoint one attorney to a one-year term, one attorney to a two-year term, and one attorney to a three-year term; and as each term expires, the new appointee shall thereafter serve three-year terms. At least one attorney appointed pursuant to this subdivision shall be a member of the San Diego County Bar Association.

(d) In the event a trustee cannot serve a full term, the appointing authority for that individual shall appoint another qualified person to complete that term. Interim appointments may be made by the board of law library trustees in accordance with Section 6305.

SEC. 2. Section 22350 of the Business and Professions Code is amended to read:

22350. (a) Any natural person who makes more than 10 services of process within this state during one calendar year, for specific compensation or in expectation of specific compensation, where such compensation is directly attributable to the service of process, shall file and maintain a verified certificate of registration as a process server with the county clerk of the county in which he or she resides or has his or her principal place of business. Any corporation or partnership that derives or expects to derive compensation from

service of process within this state shall also file and maintain a verified certificate of registration as a process server with the county clerk of the county in which the corporation or partnership has its principal place of business.

(b) This chapter shall not apply to any of the following:

(1) Any sheriff, marshal, or government employee who is acting within the course and scope of his or her employment.

(2) An attorney or his or her employees.

(3) Any person who is specially appointed by a court to serve its process.

(4) A licensed private investigator or his or her employees.

(5) A professional photocopier registered under Section 22450 whose only service of process relates to subpoenas for the production of records, which subpoenas specify that the records be copied by that registered professional photocopier.

SEC. 3. Section 8030.2 of the Business and Professions Code is amended to read:

8030.2. (a) To provide shorthand reporting services to low-income litigants in civil cases, who are unable to otherwise afford those services, funds generated by fees received by the board pursuant to subdivision (c) of Section 8031 in excess of funds needed to support the board's operating budget for the fiscal year in which a transfer described below is made shall be used by the board for the purpose of establishing and maintaining a Transcript Reimbursement Fund. The Transcript Reimbursement Fund shall be established by a transfer of funds from the Court Reporters' Fund and shall be maintained in an amount no less than three hundred thousand dollars ($300,000) for each fiscal year.

(b) All moneys held in the Court Reporters' Fund on the effective date of this section in excess of the board's operating budget for the 1996–97 fiscal year shall be used as provided in subdivision (a).

(c) Refunds and unexpended funds that are anticipated to remain in the Transcript Reimbursement Fund at the end of the fiscal year shall be considered by the board in establishing the fee assessment pursuant to Section 8031 so that the assessment shall maintain the Transcript Reimbursement Fund at the appropriate level in the following fiscal year.

(d) The Transcript Reimbursement Fund is hereby created in the State Treasury. Notwithstanding Section 13340 of the Government Code, moneys in the Transcript Reimbursement Fund are continuously appropriated for the purposes of this chapter.

(e) Applicants who have been reimbursed pursuant to this chapter for services provided to litigants and who are awarded court costs or attorneys' fees by judgment or by settlement agreement, shall refund the full amount of that reimbursement to the fund within 90 days of receipt of the award or settlement.

(f) Subject to the limitations of this chapter, the board shall maintain the fund at a level that is sufficient to pay all qualified

claims. To accomplish this objective, the board shall utilize all refunds, unexpended funds, fees, and any other moneys received by the board.

(g) Notwithstanding Section 16346 of the Government Code, all unencumbered funds remaining in the Transcript Reimbursement Fund as of June 29, 2001, shall be transferred to the Court Reporters' Fund.

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. 4. Section 8030.4 of the Business and Professions Code is amended to read:

8030.4. As used in this chapter:

(a) "Qualified legal services project" means a nonprofit project incorporated and operated exclusively in California that provides as its primary purpose and function legal services without charge to indigent persons, has a board of directors or advisory board composed of both attorneys and consumers of legal services, and provides for community participation in legal services programming. Legal services projects funded either in whole or in part by the Legal Services Corporation or with Older Americans Act funds are presumed to be qualified legal services projects for the purposes of this chapter.

(b) "Qualified support center" means an incorporated nonprofit legal services center, having an office or offices in California, which office or offices provide legal services or technical assistance without charge to qualified legal services projects and their clients on a multicounty basis in California. Support centers funded either in whole or in part by the Legal Services Corporation or with Older Americans Act funds are presumed to be qualified legal services projects for the purposes of this chapter.

(c) "Other qualified project" means a nonprofit organization formed for charitable or other public purposes, not receiving funds from the Legal Services Corporation or pursuant to the Older Americans Act, which organization or association provides free legal services to indigent persons.

(d) "Pro bono attorney" means any attorney, law firm, or legal corporation, licensed to practice law in this state, which undertakes without charge to the party the representation of an indigent person, referred by a qualified legal services project, qualified support center, or other qualified project, in a case not considered to be fee generating as defined in this chapter.

(e) "Applicant" means a qualified legal services project, qualified support center, other qualified project, or pro bono attorney applying to receive funds from the Transcript Reimbursement Fund established by this chapter. The term "applicant" shall not include

persons appearing pro se to represent themselves at any stage of the case.

(f) "Indigent person" means either a person whose income is 125 percent or less of the current poverty threshold established by the Office of Management and Budget of the United States, a disabled person whose income after meeting medical and other disability-related special expenses is 125 percent or less of that current poverty threshold, or a person who receives or is eligible to receive supplemental security income.

(g) "Fee-generating case" means any case or matter which, if undertaken on behalf of an eligible client by an attorney in private practice, reasonably may be expected to result in payment of a fee for legal services from an award to a client, from public funds, or from an opposing party. A reasonable expectation as to payment of a legal fee exists wherever a client enters into a contingent fee agreement with his or her lawyer. If there is no contingent fee agreement, a case is not considered fee generating if adequate representation is deemed to be unavailable because of the occurrence of any of the following circumstances:

(1) Where the applicant has determined that referral is not possible because of any of the following:

(A) The case has been rejected by the local lawyer referral service, or if there is no such service, by two private attorneys who have experience in the subject matter of the case.

(B) Neither the referral service nor any lawyer will consider the case without payment of a consultation fee.

(C) The case is of the type that private attorneys in the area ordinarily do not accept, or do not accept without prepayment of a fee.

(D) Emergency circumstances compel immediate action before referral can be made, but the client is advised that, if appropriate and consistent with professional responsibility, referral will be attempted at a later time.

(2) Where recovery of damages is not the principal object of the case and a request for damages is merely ancillary to an action for equitable or other nonpecuniary relief; or inclusion of a counterclaim requesting damages is necessary for effective defense or because of applicable rules governing joinder of counterclaims.

(3) Where a court appoints an applicant or an employee of an applicant pursuant to a statute or a court rule or practice of equal applicability to all attorneys in the jurisdiction.

(4) In any case involving the rights of a claimant under a public supported benefit program for which entitlement to benefit is based on need.

(h) "Legal Services Corporation" means the Legal Services Corporation established under the Legal Services Corporation Act of 1974, Public Law 93-355, as amended.

(i) "Supplemental security income recipient" means an individual receiving or eligible to receive payments under Title XVI of the Social Security Act, Public Law 92-603, as amended, or payment under Chapter 3 (commencing with Section 12000) of Part 3 of Division 9 of the Welfare and Institutions Code.

(j) "Lawyer referral service" means a lawyer referral program authorized by the State Bar of California pursuant to the rules of professional conduct.

(k) "Older Americans Act" means the Older Americans Act of 1965, Public Law 89-73, as amended.

(*l*) "Rules of professional conduct" means those rules adopted by the State Bar pursuant to Sections 6076 and 6077.

(m) "Certified shorthand reporter" means a shorthand reporter certified pursuant to Article 3 (commencing with Section 8020) performing shorthand reporting services pursuant to Section 8017.

(n) "Case" means a single legal proceeding from its inception, through all levels of hearing, trial, and appeal, until its ultimate conclusion and disposition.

This section shall become inoperative on July 1, 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. 5. Section 8030.6 of the Business and Professions Code is amended to read:

8030.6. The board shall disburse funds from the Transcript Reimbursement Fund for the costs, exclusive of per diem charges, of preparing either an original transcript and one copy thereof, or where appropriate, a copy of the transcript, of court or deposition proceedings, or both, incurred as a contractual obligation between the shorthand reporter and the applicant, for litigation conducted in California. If no deposition transcript is ordered, the board may reimburse the applicant or the certified shorthand reporter designated in the application for per diem costs. The rate of per diem for depositions shall not exceed seventy-five dollars ($75) for a half day, or one hundred twenty-five dollars ($125) for a full day. In the event that a transcript is ordered within one year of the date of the deposition, but subsequent to the per diem having been reimbursed by the Transcript Reimbursement Fund, the amount of the per diem shall be deducted from the amount of transcript. Reimbursement may be obtained through the following procedures:

(a) The applicant or certified shorthand reporter shall promptly submit to the board the certified shorthand reporter's invoice for transcripts together with the appropriate documentation as is required by this chapter.

(b) Except as provided in subdivision (c), the board shall promptly determine if the applicant or the certified shorthand reporter is entitled to reimbursement under this chapter and shall make payment as follows:

(1) Regular customary charges for preparation of original deposition transcripts and one copy thereof, or a copy of the transcripts.

(2) Regular customary charges for expedited deposition transcripts up to a maximum of two thousand five hundred dollars ($2,500) per case.

(3) Regular customary charges for the preparation of original transcripts and one copy thereof, or a copy of transcripts of court proceedings.

(4) Regular customary charges for expedited or daily charges for preparation of original transcripts and one copy thereof or a copy of transcripts of court proceedings.

(5) The charges may not include notary or handling fees. The charges may include actual shipping costs and exhibits, except that the cost of exhibits may not exceed thirty-five cents ($0.35) each or a total of thirty-five dollars ($35) per transcript.

(c) The maximum amount reimbursable by the fund under subdivision (b) may not exceed twenty thousand dollars ($20,000) per case per year.

(d) If entitled, and funds are available, the board shall forthwith disburse the appropriate sum to the applicant or the certified shorthand reporter when documentation as provided in subdivision (d) of Section 8030.8 accompanies the application. A notice shall be sent to the recipient requiring the recipient to file a notice with the court in which the action is pending stating the sum of reimbursement paid pursuant to this section. The notice filed with the court shall also state that if the sum is subsequently included in any award of costs made in the action, that the sum is to be ordered refunded by the applicant to the Transcript Reimbursement Fund whenever the sum is actually recovered as costs. The court may not consider whether payment has been made from the Transcript Reimbursement Fund in determining the appropriateness of any award of costs to the parties. The board shall also forthwith notify the applicant that the reimbursed sum has been paid to the certified shorthand reporter and shall likewise notify the applicant of the duty to refund any of the sum actually recovered as costs in the action.

(e) If not entitled, the board shall forthwith return a copy of the invoice to the applicant and the designated certified shorthand reporter together with a notice stating the grounds for denial.

(f) The board shall complete its actions under this subdivision within 30 days of receipt of the invoice and all required documentation, including a completed application.

(g) Applications for reimbursements from the fund shall be filled on a first-come basis.

(h) Applications for reimbursement that cannot be paid from the fund due to insufficiency of the fund for that fiscal year shall be held over until the next fiscal year to be paid out of the renewed fund.

This section shall become inoperative on July 1, 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. 6. Section 8030.8 of the Business and Professions Code is amended to read:

8030.8. (a) For purposes of this chapter, documentation accompanying an invoice is sufficient to establish entitlement for reimbursement from the Transcript Reimbursement Fund if it is filed with the executive officer on an application form prescribed by the board that is complete in all respects, and that establishes all of the following:

(1) The case name and number and that the litigant or litigants requesting the reimbursement are indigent persons.

(2) The applicant is qualified under the provisions of this chapter.

(3) The case is not a fee-generating case, as defined in Section 8030.4.

(4) The invoice or other documentation shall evidence that the certified shorthand reporter to be reimbursed was, at the time the services were rendered, a duly licensed certified shorthand reporter.

(5) The invoice shall be accompanied by a statement, signed by the applicant, stating that the charges are for transcripts actually provided as indicated on the invoice.

(6) The applicant has acknowledged, in writing, that as a condition of entitlement for reimbursement that the applicant agrees to refund the entire amount disbursed from the Transcript Reimbursement Fund from any costs or attorneys' fees awarded to the applicant by the court or provided for in any settlement agreement in the case.

(7) The certified shorthand reporter's invoice for transcripts shall include separate itemizations of charges claimed, as follows:

(A) Total charges and rates for customary services in preparation of an original transcript and one copy or a copy of the transcript of depositions.

(B) Total charges and rates for expedited deposition transcripts.

(C) Total charges and rates in connection with transcription of court proceedings.

(b) For an applicant claiming to be eligible pursuant to subdivision (a), (b), or (c) of Section 8030.4, a letter from the director of the project or center, certifying that the project or center meets the standards set forth in one of those subdivisions and that the litigant or litigants are indigent persons, is sufficient documentation to establish eligibility.

(c) For an applicant claiming to be eligible pursuant to subdivision (d) of Section 8030.4, a letter certifying that the applicant meets the requirements of that subdivision, that the case is not a fee-generating case, as defined in subdivision (g) of Section 8030.4, and that the litigant or litigants are indigent persons, together with

a letter from the director of a project or center defined in subdivision (a), (b), or (c) of Section 8030.4 certifying that the litigant or litigants had been referred by that project or center to the applicant, is sufficient documentation to establish eligibility.

(d) The applicant may receive reimbursement directly from the board when the applicant has previously paid the certified shorthand reporter for transcripts as provided in Section 8030.6. To receive payment directly, the applicant shall submit, in addition to all other required documentation, an itemized statement signed by the certified shorthand reporter performing the services that describes payment for transcripts in accordance with the requirements of Section 8030.6.

(e) The board may prescribe appropriate forms to be used by applicants and certified reporters to facilitate these requirements.

(f) This chapter does not restrict the contractual obligation or payment for services, including, but not limited to, billing the applicant directly, during the pendency of the claim.

This section shall become inoperative on July 1, 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. 7. Section 1793.23 of the Civil Code is amended to read:

1793.23. (a) The Legislature finds and declares all of the following:

(1) That the expansion of state warranty laws covering new and used cars has given important and valuable protection to consumers.

(2) That, in states without this valuable warranty protection, used and irrepairable motor vehicles are being resold in the marketplace without notice to the subsequent purchaser.

(3) That other states have addressed this problem by requiring notices on the title of these vehicles or other notice procedures to warn consumers that the motor vehicles were repurchased by a dealer or manufacturer because the vehicle could not be repaired in a reasonable length of time or a reasonable number of repair attempts or the dealer or manufacturer was not willing to repair the vehicle.

(4) That these notices serve the interests of consumers who have a right to information relevant to their buying decisions.

(5) That the disappearance of these notices upon the transfer of title from another state to this state encourages the transport of "lemons" to this state for sale to the drivers of this state.

(b) This section and Section 1793.24 shall be known, and may be cited as, the Automotive Consumer Notification Act.

(c) Any manufacturer who reacquires or assists a dealer or lienholder to reacquire a motor vehicle registered in this state, any other state, or a federally administered district shall, prior to any sale, lease, or transfer of the vehicle in this state, or prior to exporting the vehicle to another state for sale, lease, or transfer if the vehicle was

registered in this state and reacquired pursuant to paragraph (2) of subdivision (d) of Section 1793.2, cause the vehicle to be retitled in the name of the manufacturer, request the Department of Motor Vehicles to inscribe the ownership certificate with the notation "Lemon Law Buyback," and affix a decal to the vehicle in accordance with Section 11713.12 of the Vehicle Code if the manufacturer knew or should have known that the vehicle is required by law to be replaced, accepted for restitution due to the failure of the manufacturer to conform the vehicle to applicable warranties pursuant to paragraph (2) of subdivision (d) of Section 1793.2, or accepted for restitution by the manufacturer due to the failure of the manufacturer to conform the vehicle to warranties required by any other applicable law of the state, any other state, or federal law.

(d) Any manufacturer who reacquires or assists a dealer or lienholder to reacquire a motor vehicle in response to a request by the buyer or lessee that the vehicle be either replaced or accepted for restitution because the vehicle did not conform to express warranties shall, prior to the sale, lease, or other transfer of the vehicle, execute and deliver to the subsequent transferee a notice and obtain the transferee's written acknowledgment of a notice, as prescribed by Section 1793.24.

(e) Any person, including any dealer, who acquires a motor vehicle for resale and knows or should have known that the vehicle was reacquired by the vehicle's manufacturer in response to a request by the last retail owner or lessee of the vehicle that it be replaced or accepted for restitution because the vehicle did not conform to express warranties shall, prior to the sale, lease, or other transfer, execute and deliver to the subsequent transferee a notice and obtain the transferee's written acknowledgment of a notice, as prescribed by Section 1793.24.

(f) Any person, including any manufacturer or dealer, who sells, leases, or transfers ownership of a motor vehicle when the vehicle's ownership certificate is inscribed with the notation "Lemon Law Buyback" shall, prior to the sale, lease, or ownership transfer of the vehicle, provide the transferee with a disclosure statement signed by the transferee that states:

"THIS VEHICLE WAS REPURCHASED BY ITS MANUFACTURER DUE TO A DEFECT IN THE VEHICLE PURSUANT TO CONSUMER WARRANTY LAWS. THE TITLE TO THIS VEHICLE HAS BEEN PERMANENTLY BRANDED WITH THE NOTATION 'LEMON LAW BUYBACK'."

(g) The disclosure requirements in subdivisions (d), (e), and (f) are cumulative with all other consumer notice requirements and do not relieve any person, including any dealer or manufacturer, from complying with any other applicable law, including any requirement of subdivision (f) of Section 1793.22.

(h) For purposes of this section, "dealer" means any person engaged in the business of selling, offering for sale, or negotiating the retail sale of, a used motor vehicle or selling motor vehicles as a broker or agent for another, including the officers, agents, and employees of the person and any combination or association of dealers.

SEC. 8. 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 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 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), which 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 which 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. Where the beneficiary or mortgagee has made no advances on defaults which 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 which 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, including certified and express mail charges, publishing, and posting notices required by Sections 2924 to 2924i, inclusive, postponement pursuant to Section 2924g 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 which 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 which 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.

In the event 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.

In the event 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 which 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 the terms of 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. 9. Section 2924j of the Civil Code is amended to read:

2924j. (a) Unless an interpleader action has been filed, within 30 days of the execution of the trustee's deed resulting from a sale in which there are proceeds remaining after payment of the amounts required by paragraphs (1) and (2) of subdivision (a) of Section 2924k, the trustee shall send written notice to all persons with recorded interests in the real property as of the date immediately

prior to the trustee's sale who would be entitled to notice pursuant to subdivisions (b) and (c) of Section 2924b. The notice shall be sent by first-class mail in the manner provided in paragraph (1) of subdivision (c) of Section 2924b and inform each entitled person of each of the following:

(1) That there has been a trustee's sale of the described real property.

(2) That the noticed person may have a claim to all or a portion of the sale proceeds remaining after payment of the amounts required by paragraphs (1) and (2) of subdivision (a) of Section 2924k.

(3) The noticed person may contact the trustee at the address provided in the notice to pursue any potential claim.

(4) That before the trustee can act, the noticed person shall submit a written claim to the trustee, executed under penalty of perjury, stating the following:

(A) The amount of the claim to the date of trustee's sale.

(B) An itemized statement of the principal, interest, and other charges.

(C) That claims must be received by the trustee at the address stated in the notice no later than 30 days after the date the trustee sends notice to the potential claimant.

(b) The trustee shall exercise due diligence to determine the priority of the written claims received by the trustee to the trustee's sale surplus proceeds from those persons to whom notice was sent pursuant to subdivision (a). In the event there is no dispute as to the priority of the written claims submitted to the trustee, proceeds shall be paid within 30 days after the conclusion of the notice period. If the trustee has failed to determine the priority of written claims within 90 days following the 30-day notice period, then within 10 days thereafter the trustee shall deposit the funds with the clerk of the court pursuant to subdivision (c) or file an interpleader action pursuant to subdivision (e). Nothing in this section shall preclude any person from pursuing other remedies or claims as to surplus proceeds.

(c) If, after due diligence, the trustee is unable to determine the priority of the written claims received by the trustee to the trustee's sale surplus of multiple persons or if the trustee determines there is a conflict between potential claimants, the trustee may file a declaration of the unresolved claims and deposit with the clerk of the superior or municipal court, as applicable, of the county in which the sale occurred, that portion of the sales proceeds that cannot be distributed, less any fees charged by the clerk pursuant to this subdivision. The declaration shall specify the date of the trustee's sale, a description of the property, the names and addresses of all persons sent notice pursuant to subdivision (a), a statement that the trustee exercised due diligence pursuant to subdivision (b), that the trustee provided written notice as required by subdivisions (a) and (d) and

the amount of the sales proceeds deposited by the trustee with the superior or municipal court. Further, the trustee shall submit a copy of the trustee's sales guarantee and any information relevant to the identity, location, and priority of the potential claimants with the superior or municipal court and shall file proof of service of the notice required by subdivision (d) on all persons described in subdivision (a).

The clerk shall deposit the amount with the county treasurer subject to order of the superior or municipal court upon the application of any interested party. The clerk may charge a reasonable fee for the performance of activities pursuant to this subdivision equal to the fee for filing an interpleader action pursuant to Article 2 (commencing with Section 26820) of Division 2 of Title 3 of the Government Code. Upon deposit of that portion of the sale proceeds that cannot be distributed by due diligence, the trustee shall be discharged of further responsibility for the disbursement of sale proceeds. A deposit with the clerk of the superior or municipal court pursuant to this subdivision may be either for the total proceeds of the trustee's sale, less any fees charged by the clerk, if a conflict or conflicts exist with respect to the total proceeds, or that portion that cannot be distributed after due diligence, less any fees charged by the clerk.

(d) Before the trustee deposits the funds with the clerk of the court pursuant to subdivision (c), the trustee shall send written notice by first-class mail, postage prepaid, to all persons described in subdivision (a) informing them that the trustee intends to deposit the funds with the clerk of the superior or municipal court, as applicable, and that a claim for the funds must be filed with the court within 30 days from the date of the notice, providing the address of the court in which the funds were deposited, and a phone number for obtaining further information.

Within 90 days after deposit with the clerk, the court shall consider all claims filed at least 15 days before the date on which the hearing is scheduled by the court, the clerk shall serve written notice of the hearing by first-class mail on all claimants identified in the trustees' declaration at the addresses specified therein. The court shall distribute the deposited funds to any and all claimants entitled thereto.

(e) Nothing in this section restricts the ability of a trustee to file an interpleader action in order to resolve a dispute about the proceeds of a trustee's sale. Once an interpleader action has been filed, thereafter the provisions of this section shall not apply.

(f) "Due diligence," for the purposes of this section means that the trustee researched the written claims submitted or other evidence of conflicts and determined that a conflict of priorities exists between two or more claimants which the trustee is unable to resolve.

SEC. 10. Section 2924.3 of the Civil Code is amended to read:

2924.3. (a) Except as provided in subdivisions (b) and (c), a person who has undertaken as an agent of a mortgagee, beneficiary, or owner of a promissory note secured directly or collaterally by a mortgage or deed of trust on real property or an estate for years therein, to make collections of payments from an obligor under the note, shall mail the following notices, postage prepaid, to each mortgagee, beneficiary or owner for whom the agent has agreed to make collections from the obligor under the note:

(1) A copy of the notice of default filed in the office of the county recorder pursuant to Section 2924 on account of a breach of obligation under the promissory note on which the agent has agreed to make collections of payments, within 15 days after recordation.

(2) Notice that a notice of default has been recorded pursuant to Section 2924 on account of a breach of an obligation secured by a mortgage or deed of trust against the same property or estate for years therein having priority over the mortgage or deed of trust securing the obligation described in paragraph (1), within 15 days after recordation or within three business days after the agent receives the information, whichever is later.

(3) Notice of the time and place scheduled for the sale of the real property or estate for years therein pursuant to Section 2924f under a power of sale in a mortgage or deed of trust securing an obligation described in paragraphs (1) or (2), not less than 15 days before the scheduled date of the sale or not later than the next business day after the agent receives the information, whichever is later.

(b) An agent who has undertaken to make collections on behalf of mortgagees, beneficiaries or owners of promissory notes secured by mortgages or deeds of trust on real property or an estate for years therein shall not be required to comply with the provisions of subdivision (a) with respect to a mortgagee, beneficiary or owner who is entitled to receive notice pursuant to subdivision (c) of Section 2924b or for whom a request for notice has been recorded pursuant to subdivision (b) of Section 2924b if the agent reasonably believes that the address of the mortgagee, beneficiary, or owner described in Section 2924b is the current business or residence address of that person.

(c) An agent who has undertaken to make collections on behalf of mortgagees, beneficiaries or owners of promissory notes secured by mortgages or deeds of trust on real property or an estate for years therein shall not be required to comply with the provisions of paragraph (1) or (2) of subdivision (a) if the agent knows or reasonably believes that the default has already been cured by or on behalf of the obligor.

(d) Any failure to comply with the provisions of this section 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.

SEC. 11. Section 77 of the Code of Civil Procedure is amended to read:

77. (a) In every county and city and county, there is an appellate department of the superior court consisting of three judges or, when the Chairperson of the Judicial Council finds it necessary, four judges.

(1) In a county with three or fewer judges of the superior court, the appellate department shall consist of those judges, one of whom shall be designated as presiding judge by the Chairperson of the Judicial Council, and an additional judge or judges as designated by the Chairperson of the Judicial Council. Each additional judge shall be a judge of the superior court of another county or a judge retired from the superior court or court of higher jurisdiction in this state.

(2) In a county with four or more judges of the superior court, the appellate department shall consist of judges of that court designated by the Chairperson of the Judicial Council, who shall also designate one of the judges as the presiding judge of the department.

(b) In an appellate department with four judges, no more than three judges shall participate in a hearing or decision. The presiding judge of the department shall designate the three judges who shall participate.

(c) In addition to their other duties, the judges designated as members of the appellate department of the superior court shall serve for the period specified in the order of designation. Whenever a judge is designated to serve in the appellate department of the superior court of a county other than the county in which the judge was elected or appointed as a superior court judge, or if he or she is retired, in a county other than the county in which he or she resides, he or she shall receive from the county to which he or she is designated his or her expenses for travel, board, and lodging. If the judge is out of his or her county overnight or longer, by reason of the designation, the judge shall be paid a per diem allowance in lieu of expenses for board and lodging in the same amounts as are payable for those purposes to justices of the Supreme Court under the rules of the State Board of Control. In addition, a retired judge shall receive from the state and the county to which he or she is designated, for the time so served, amounts equal to that which he or she would have received from each if he or she had been assigned to the superior court of the county.

(d) The concurrence of two judges of the appellate department of the superior court shall be necessary to render the decision in every case in, and to transact any other business except business that may be done at chambers by the presiding judge of, that department. The presiding judge shall convene the appellate department when necessary. He or she shall also supervise its business and transact any business that may be done at chambers.

(e) Every appellate department under this section shall have jurisdiction on appeal from the municipal courts within the county or city and county in all cases in which an appeal may be taken to the superior court as is now or may hereafter be provided by law, except those appeals that require a retrial in the superior court. The powers

of each appellate department shall be the same as are now or may hereafter be provided by law or rule of the Judicial Council relating to appeals to the superior courts.

(f) The Judicial Council may promulgate rules, not inconsistent with law, governing the practice and procedure and the disposition of the business of such appellate departments, or of each class thereof.

(g) Notwithstanding any other provision of law, the chief justice may designate any municipal court judge as a member of the appellate department of the superior court if the municipal court is participating in a trial court coordination plan approved by the Judicial Council and the designated municipal court judge has been assigned to the superior court of the county by the chief justice.

SEC. 11.5. Section 77 of the Code of Civil Procedure is amended to read:

77. (a) In every county and city and county, there is an appellate division of the superior court consisting of three judges or, when the Chief Justice finds it necessary, four judges.

The Chief Justice shall assign judges to the appellate division for specified terms pursuant to rules, not inconsistent with statute, adopted by the Judicial Council to promote the independence and quality of each appellate division. Each judge assigned to the appellate division of a superior court shall be a judge of that court, a judge of the superior court of another county, or a judge retired from the superior court or a court of higher jurisdiction in this state.

The Chief Justice shall designate one of the judges of each appellate division as the presiding judge of the division.

(b) In each appellate division, no more than three judges shall participate in a hearing or decision. The presiding judge of the division shall designate the three judges who shall participate.

(c) In addition to their other duties, the judges designated as members of the appellate division of the superior court shall serve for the period specified in the order of designation. Whenever a judge is designated to serve in the appellate division of the superior court of a county other than the county in which that judge was elected or appointed as a superior court judge, or if the judge is retired, in a county other than the county in which the judge resides, the judge shall receive from the county to which the judge is designated expenses for travel, board, and lodging. If the judge is out of the judge's county overnight or longer, by reason of the designation, that judge shall be paid a per diem allowance in lieu of expenses for board and lodging in the same amounts as are payable for those purposes to justices of the Supreme Court under the rules of the State Board of Control. In addition, a retired judge shall receive from the state and the county to which the judge is designated, for the time so served, amounts equal to that which the judge would have received from each if the judge had been assigned to the superior court of the county.

(d) The concurrence of two judges of the appellate division of the superior court shall be necessary to render the decision in every case in, and to transact any other business except business that may be done at chambers by the presiding judge of, the division. The presiding judge shall convene the appellate division when necessary. The presiding judge shall also supervise its business and transact any business that may be done at chambers.

(e) The appellate division of the superior court has jurisdiction on appeal from the following courts, in all cases in which an appeal may be taken to the superior court or the appellate division of the superior court as provided by law, except where the appeal is a retrial in the superior court:

(1) The municipal courts within the county.

(2) The superior court in a county in which there is no municipal court.

(f) The powers of each appellate division shall be the same as are now or may hereafter be provided by law or rule of the Judicial Council relating to appeals to the appellate division of the superior courts.

(g) The Judicial Council shall promulgate rules, not inconsistent with law, to promote the independence of, and govern the practice and procedure and the disposition of the business of the appellate division.

(h) Notwithstanding any other provision of law, the Chief Justice may designate any municipal court judge as a member of the appellate department of the superior court if the municipal court is participating in a trial court coordination plan approved by the Judicial Council and the designated municipal court judge has been assigned to the superior court of the county by the Chief Justice.

(i) A reference in any other statute to the appellate department of the superior court means the appellate division of the superior court.

SEC. 12. Section 87 of the Code of Civil Procedure is repealed.

SEC. 13. Section 200 of the Code of Civil Procedure is amended to read:

200. When authorized by local superior court rules, a municipal court district pursuant to duly adopted court rule may use the same juror pool as that summoned for use in the superior court. Persons so selected for jury service in those municipal courts need not be residents of the judicial district. In Los Angeles County, the municipal courts shall use the same jury pool as that summoned for use in the superior court.

SEC. 13.5. Section 200 of the Code of Civil Procedure is amended to read:

200. When authorized by local superior court rules, a municipal court district pursuant to duly adopted court rule may use the same juror pool as that summoned for use in the superior court. Persons so selected for jury service in those municipal courts need not be

residents of the judicial district. In Los Angeles County, the municipal courts shall use the same jury pool as that summoned for use in the superior court.

SEC. 14. Section 484.070 of the Code of Civil Procedure is amended to read:

484.070. (a) If the defendant claims that the personal property described in the plaintiff's application, or a portion of such property, is exempt from attachment, the defendant shall claim the exemption as provided in this section. If the defendant fails to make the claim or makes the claim but fails to prove that the personal property is exempt, the defendant may not later claim the exemption except as provided in Section 482.100.

(b) If the defendant desires to claim at the hearing that real or personal property not described in the plaintiff's application or real property described in the plaintiff's application is exempt from attachment, in whole or in part, the defendant shall claim the exemption as provided in this section. Failure to make the claim does not preclude the defendant from later claiming the exemption. If the claim is made as provided in this section but the defendant fails to prove that the property is exempt from attachment, the defendant may not later claim that the property, or a portion thereof, is exempt except as provided in Section 482.100.

(c) The claim of exemption shall:

(1) Describe the property claimed to be exempt.

(2) Specify the statute section supporting the claim.

(d) The claim of exemption shall be accompanied by an affidavit supporting any factual issues raised by the claim and points and authorities supporting any legal issues raised.

(e) The claim of exemption, together with any supporting affidavit and points and authorities, shall be filed and served on the plaintiff not less than five court days before the date set for the hearing.

(f) If the plaintiff desires to oppose the claim of exemption, the plaintiff shall file and serve on the defendant, not less than two days before the date set for the hearing, a notice of opposition to the claim of exemption, accompanied by an affidavit supporting any factual issues raised and points and authorities supporting any legal issues raised. If the plaintiff does not file and serve a notice of opposition as provided in this subdivision, no writ of attachment shall be issued as to the property claimed to be exempt. If all of the property described in the plaintiff's application is claimed to be exempt and the plaintiff does not file and serve a notice of opposition as provided in this subdivision, no hearing shall be held and no right to attach order or writ of attachment shall be issued and any temporary protective order issued pursuant to Chapter 6 (commencing with Section 486.010) immediately expires.

(g) If the plaintiff files and serves a notice of opposition to the claim as provided in this section, the defendant has the burden of proving that the property is exempt from attachment.

SEC. 15. Section 484.350 of the Code of Civil Procedure is amended to read:

484.350. (a) If the defendant claims that the property described in the plaintiff's application, or a portion of such property, is exempt from attachment, the defendant may claim the exemption as provided in this section. If the defendant fails to make a claim with respect to personal property, or makes a claim with respect to real or personal property but fails to prove that the property is exempt, the defendant may not later claim the exemption except as provided in Section 482.100.

(b) The claim of exemption shall:

(1) Describe the property claimed to be exempt.

(2) Specify the statute section supporting the claim.

(c) The claim of exemption shall be accompanied by an affidavit supporting any factual issues raised by the claim and points and authorities supporting any legal issues raised.

(d) The claim of exemption, together with any supporting affidavit and points and authorities, shall be filed and served on the plaintiff not less than five court days before the date set for the hearing.

SEC. 16. Section 569 of the Code of Civil Procedure is amended to read:

569. Funds in the hands of a receiver may be deposited in one or more interest bearing accounts in the name and for the benefit of the receivership estate with one or more financial institutions, provided that all of the following conditions are satisfied:

(a) The deposits are fully guaranteed or insured under federal law.

(b) The financial institution in which the funds are deposited is not a party to the action in which the receiver was appointed.

(c) The receiver does not own 1 percent or more in value of the outstanding stock of the financial institution, is not an officer, director, or employee of the financial institution, and is not a sibling, whether by the whole or half-blood, spouse, aunt, uncle, nephew, niece, ancestor, or lineal descendant of an owner, officer, employee, or director.

SEC. 17. Section 701.040 of the Code of Civil Procedure, as amended by Section 5 of Chapter 591 of the Statutes of 1995, is amended to read:

701.040. (a) Except as otherwise ordered by the court upon a determination that the judgment creditor's lien has priority over the security interest, if property levied upon is subject to a security interest that attached prior to levy, the property or obligation is subject to enforcement of the security interest without regard to the levy unless the property is in the custody of the levying officer; but,

if the execution lien has priority over the security interest, the secured party is liable to the judgment creditor for any proceeds received by the secured party from the property to the extent of the execution lien.

(b) After the security interest is satisfied, the secured party shall deliver any excess property, and pay any excess payments or proceeds of property, remaining in the possession of the secured party to the levying officer for the purposes of the levy, as provided in Sections 9502 and 9504 of the Commercial Code, unless otherwise ordered by the court or directed by the levying officer.

(c) This section shall be repealed on January 1, 2002.

SEC. 18. Section 1005 of the Code of Civil Procedure is amended to read:

1005. (a) Written notice shall be given, as prescribed in subdivision (b), for the following motions:

(1) Notice of Application and Hearing for Writ of Attachment under Section 484.040.

(2) Notice of Application and Hearing for Claim and Delivery under Section 512.030.

(3) Notice of Hearing for Claim of Exemption under Section 706.105.

(4) Motion to Quash Summons pursuant to subdivision (b) of Section 418.10.

(5) Motion for Determination of Good Faith Settlement pursuant to Section 877.6.

(6) Hearing for Discovery of Peace Officer Personnel Records pursuant to Section 1043 of the Evidence Code.

(7) Notice of Hearing of Third-Party Claim pursuant to Section 720.320.

(8) Motion for an Order to Attend Deposition more than 150 miles from deponent's residence pursuant to paragraph (3) of subdivision (e) of Section 2025.

(9) Notice of Hearing of Application for Relief pursuant to Section 946.6 of the Government Code.

(10) Motion to Set Aside Default or Default Judgment and for Leave to Defend Actions pursuant to Section 473.5.

(11) Motion to Expunge Notice of Pendency of Action pursuant to Section 405.30.

(12) Motion to Set Aside Default and for Leave to Amend pursuant to Section 585.5.

(13) Any other proceeding under this code in which notice is required and no other time or method is prescribed by law or by court or judge.

(b) Unless otherwise ordered or specifically provided by law, all moving and supporting papers shall be served and filed at least 15 calendar days before the time appointed for the hearing. The moving and supporting papers served shall be a copy of the papers filed or to be filed with the court. However, if the notice is served by mail,

the required 15-day period of notice before the time appointed for the hearing shall be increased by five days if the place of mailing and the place of address are within the State of California, 10 days if either the place of mailing or the place of address is outside the State of California but within the United States, and 20 days if either the place of mailing or the place of address is outside the United States, and if the notice is served by facsimile transmission, express mail, or another method of delivery providing for overnight delivery, the required 15-day period of notice before the time appointed for the hearing shall be increased by two court days. Section 1013, which extends the time within which a right may be exercised or an act may be done, does not apply to a notice of motion, papers opposing a motion, or reply papers governed by this section. All papers opposing a motion so noticed shall be filed with the court and a copy served on each party at least five court days, and all reply papers at least two court days before the time appointed for the hearing. Notwithstanding any other provision of this section, all papers opposing a motion and all reply papers shall be served by personal delivery, facsimile transmission, express mail, or other means consistent with the provisions of Sections 1010, 1011, 1012, and 1013, and reasonably calculated to ensure delivery to the other party or parties not later than the close of the next business day after the time the opposing papers or reply papers, as applicable, are filed.

The court, or a judge thereof, may prescribe a shorter time.

SEC. 19. Section 1985.3 of the Code of Civil Procedure is amended to read:

1985.3. (a) For purposes of this section, the following definitions apply:

(1) "Personal records" means the original or any copy of books, documents, or other writings pertaining to a consumer and which are maintained by any "witness" which is a physician, chiropractor, veterinarian, veterinary hospital, veterinary clinic, pharmacist, pharmacy, hospital, state or national bank, state or federal association (as defined in Section 5102 of the Financial Code), state or federal credit union, trust company, anyone authorized by this state to make or arrange loans that are secured by real property, security brokerage firm, insurance company, title insurance company, underwritten title company, escrow agent licensed pursuant to Division 6 (commencing with Section 17000) of the Financial Code or exempt from licensure pursuant to Section 17006 of the Financial Code, attorney, accountant, institution of the Farm Credit System, as specified in Section 2002 of Title 12 of the United States Code, or telephone corporation which is a public utility, as defined in Section 216 of the Public Utilities Code, or psychotherapist, as defined in Section 1010 of the Evidence Code, or a private or public preschool, elementary school, or secondary school.

(2) "Consumer" means any individual, partnership of five or fewer persons, association, or trust which has transacted business

with, or has used the services of, the witness or for whom the witness has acted as agent or fiduciary.

(3) "Subpoenaing party" means the person or persons causing a subpoena duces tecum to be issued or served in connection with any civil action or proceeding pursuant to this code, but shall not include the state or local agencies described in Section 7465 of the Government Code, or any entity provided for under Article VI of the California Constitution in any proceeding maintained before an adjudicative body of that entity pursuant to Chapter 4 (commencing with Section 6000) of Division 3 of the Business and Professions Code.

(4) "Deposition officer" means a person who meets the qualifications specified in paragraph (3) of subdivision (d) of Section 2020.

(b) The date specified in a subpoena duces tecum for the production of personal records shall not be less than 15 days from the date the subpoena is issued. Prior to the date called for in the subpoena duces tecum for the production of personal records, the subpoenaing party shall serve or cause to be served on the consumer whose records are being sought a copy of the subpoena duces tecum, of the affidavit supporting the issuance of the subpoena, and of the notice described in subdivision (e). This service shall be made as follows:

(1) To the consumer personally, or at his or her last known address, or in accordance with Chapter 5 (commencing with Section 1010) of Title 14 of Part 3, or, if he or she is a party, to his or her attorney of record. If the consumer is a minor, service shall be made on the minor's parent, guardian, conservator, or similar fiduciary, or if one of them cannot be located with reasonable diligence, then service shall be made on any person having the care or control of the minor or with whom the minor resides or by whom the minor is employed, and on the minor if the minor is at least 12 years of age.

(2) Not less than 10 days prior to the date for production specified in the subpoena duces tecum, plus the additional time provided by Section 1013 if service is by mail.

(3) At least five days prior to service upon the custodian of the records, plus the additional time provided by Section 1013 if service is by mail.

(c) Prior to the production of the records, the subpoenaing party shall do either of the following:

(1) Serve or cause to be served upon the witness a proof of personal service or of service by mail attesting to compliance with subdivision (b).

(2) Furnish the witness a written authorization to release the records signed by the consumer or by his or her attorney of record. The witness may presume that any attorney purporting to sign the authorization on behalf of the consumer acted with the consent of the consumer.

(d) A subpoena duces tecum for the production of personal records shall be served in sufficient time to allow the witness a reasonable time to locate and produce the records or copies thereof.

Except as to records subpoenaed for a criminal proceeding or records subpoenaed during trial, a subpoena duces tecum served upon a witness with records in more than one location shall be served no less than 10 days prior to the date specified for production, unless good cause is shown pursuant to subdivision (h).

(e) Every copy of the subpoena duces tecum and affidavit served on a consumer or his or her attorney in accordance with subdivision (b) shall be accompanied by a notice, in a typeface designed to call attention to the notice, indicating that (1) records about the consumer are being sought from the witness named on the subpoena; (2) if the consumer objects to the witness furnishing the records to the party seeking the records, the consumer must file papers with the court or serve a written objection as provided in subdivision (g) prior to the date specified for production on the subpoena; and (3) if the party who is seeking the records will not agree in writing to cancel or limit the subpoena, an attorney should be consulted about the consumer's interest in protecting his or her rights of privacy. If a notice of taking of deposition is also served, that other notice may be set forth in a single document with the notice required by this subdivision.

(f) A subpoena duces tecum for personal records maintained by a telephone corporation which is a public utility, as defined in Section 216 of the Public Utilities Code, shall not be valid or effective unless it includes a consent to release, signed by the consumer whose records are requested, as required by Section 2891 of the Public Utilities Code.

(g) Any consumer whose personal records are sought by a subpoena duces tecum and who is a party to the civil action in which this subpoena duces tecum is served may, prior to the date for production, bring a motion under Section 1987.1 to quash or modify the subpoena duces tecum. Notice of the bringing of that motion shall be given to the witness and deposition officer at least five days prior to production. The failure to provide notice to the deposition officer shall not invalidate the motion to quash or modify the subpoena duces tecum.

Any other consumer whose personal records are sought by a subpoena duces tecum may, prior to the date of production, serve on the requesting party and the witness a written objection that specifies the specific grounds on which production of the personal records should be prohibited.

No witness or deposition officer shall be required to produce personal records after receipt of notice that such a motion has been brought, except upon order of the court in which the action is pending or by agreement of the parties, witnesses, and consumers affected. No witness shall be required to produce personal records

after service of a written objection by a nonparty consumer, except upon order of the court in which the action is pending or by agreement of the parties, witnesses, and consumers affected.

The party requesting a consumer's personal records may bring a motion under Section 1987.1 to enforce the subpoena within 20 days of service of the written objection. The motion shall be accompanied by a declaration showing a reasonable and good faith attempt at informal resolution of the dispute between the party requesting the personal records and the consumer or the consumer's attorney.

(h) Upon good cause shown and provided that the rights of witnesses and consumers are preserved, a subpoenaing party shall be entitled to obtain an order shortening the time for service of a subpoena duces tecum or waiving the requirements of subdivision (b) where due diligence by the subpoenaing party has been shown.

(i) Nothing contained in this section shall be construed to apply to any subpoena duces tecum which does not request the records of any particular consumer or consumers and which requires a custodian of records to delete all information which would in any way identify any consumer whose records are to be produced.

(j) This section shall not apply to proceedings conducted under Division 1 (commencing with Section 50), Division 4 (commencing with Section 3200), Division 4.5 (commencing with Section 6100), or Division 4.7 (commencing with Section 6200) of the Labor Code.

(k) Failure to comply with this section shall be sufficient basis for the witness to refuse to produce the personal records sought by a subpoena duces tecum.

SEC. 20. Section 1985.6 of the Code of Civil Procedure is amended to read:

1985.6. (a) For purposes of this section, the following definitions apply:

(1) "Employment records" means the original or any copy of books, documents, or other writings pertaining to the employment of any employee maintained by the current or former employer of the employee.

(2) "Employee" means any individual who is or has been employed by a witness subject to a subpoena duces tecum.

(3) "Subpoenaing party" means the person or persons causing a subpoena duces tecum to be issued or served in connection with any civil action or proceeding, but shall not include the state or local agencies described in Section 7465 of the Government Code, or any entity provided for under Article VI of the California Constitution in any proceeding maintained before an adjudicative body of that entity pursuant to Chapter 4 (commencing with Section 6000) of Division 3 of the Business and Professions Code.

(4) "Deposition officer" means a person who meets the qualifications specified in paragraph (3) of subdivision (d) of Section 2020.

(b) The date specified in a subpoena duces tecum for the production of employment records shall not be less than 15 days from the date the subpoena is issued. Prior to the date called for in the subpoena duces tecum of the production of employment records, the subpoenaing party shall serve or cause to be served on the employee whose records are being sought a copy of: the subpoena duces tecum; the affidavit supporting the issuance of the subpoena, if any; and the notice described in subdivision (e). This service shall be made as follows:

(1) To the employee personally, or at his or her last known address, or in accordance with Chapter 5 (commencing with Section 1010) of Title 14 of Part 3, or, if he or she is a party, to his or her attorney of record. If the employee is a minor, service shall be made on the minor's parent, guardian, conservator, or similar fiduciary, or if one of them cannot be located with reasonable diligence, then service shall be made on any person having the care or control of the minor, or with whom the minor resides, and on the minor if the minor is at least 12 years of age.

(2) Not less than 10 days prior to the date for production specified in the subpoena duces tecum, plus the additional time provided by Section 1013 if service is by mail.

(3) At least five days prior to service upon the custodian of the employment records, plus the additional time provided by Section 1013 if service is by mail.

(c) Prior to the production of the records, the subpoenaing party shall either:

(1) Serve or cause to be served upon the witness a proof of personal service or of service by mail attesting to compliance with subdivision (b).

(2) Furnish the witness a written authorization to release the records signed by the employee or by his or her attorney of record. The witness may presume that the attorney purporting to sign the authorization on behalf of the employee acted with the consent of the employee.

(d) A subpoena duces tecum for the production of employment records shall be served in sufficient time to allow the witness a reasonable time to locate and produce the records or copies thereof.

Except as to records subpoenaed for a criminal proceeding or records subpoenaed during trial, a subpoena duces tecum served upon a witness with records in more than one location shall be served no less than 10 days prior to the date specified for production, unless good cause is shown pursuant to subdivision (g).

(e) Every copy of the subpoena duces tecum and affidavit served on an employee or his or her attorney in accordance with subdivision (b) shall be accompanied by a notice, in a typeface designed to call attention to the notice, indicating that (1) employment records about the employee are being sought from the witness named on the subpoena; (2) the employment records may be protected by a right

of privacy; (3) if the employee objects to the witness furnishing the records to the party seeking the records the employee shall file papers with the court prior to the date specified for production on the subpoena; and (4) if the subpoenaing party does not agree in writing to cancel or limit the subpoena, an attorney should be consulted about the employee's interest in protecting his or her rights of privacy. If a notice of taking of deposition is also served, that other notice may be set forth in a single document with the notice required by this subdivision.

(f) Any employee whose employment records are sought by a subpoena duces tecum may, prior to the date for production, bring a motion under Section 1987.1 to quash or modify the subpoena duces tecum. Notice of the bringing of that motion shall be given to the witness and the deposition officer at least five days prior to production. The failure to provide notice to the deposition officer shall not invalidate the motion to quash or modify the subpoena duces tecum.

Any nonparty employee whose employment records are sought by a subpoena duces tecum may, prior to the date of production, serve on the requesting party and the witness a written objection that specifies the specific grounds on which production of the employment records should be prohibited.

No witness or deposition officer shall be required to produce employment records after receipt of notice that such a motion has been brought, except upon order of the court in which the action is pending or by agreement of the parties, witnesses, and employees affected. No witness shall be required to produce employment records after service of a written objection by a nonparty employee, except upon order of the court in which the action is pending or by agreement of the parties, witnesses, and employees affected.

The party requesting an employee's employment records may bring a motion under subdivision (c) of Section 1987 to enforce the subpoena within 20 days of service of the written objection. The motion shall be accompanied by a declaration showing a reasonable and good faith attempt at informal resolution of the dispute between the party requesting the employment records and the employee or the employee's attorney.

(g) Upon good cause shown and provided that the rights of witness and employees are preserved, a subpoenaing party shall be entitled to obtain an order shortening the time for service of a subpoena duces tecum or waiving the requirements of subdivision (b) where due diligence by the subpoenaing party has been shown.

(h) Nothing contained in this section shall be construed to apply to any subpoena duces tecum which does not request the records of any particular employee or employees and which requires a custodian of records to delete all information which would in any way identify any employee whose records are to be produced.

(i) This section shall not apply to proceedings conducted under Division 1 (commencing with Section 50), Division 4 (commencing with Section 3200), Division 4.5 (commencing with Section 6100), or Division 4.7 (commencing with Section 6200) of the Labor Code.

(j) Failure to comply with this section shall be sufficient basis for the witness to refuse to produce the employment records sought by subpoena duces tecum.

SEC. 21. Section 2024 of the Code of Civil Procedure is amended to read:

2024. (a) Except as otherwise provided in this section, any party shall be entitled as a matter of right to complete discovery proceedings on or before the 30th day, and to have motions concerning discovery heard on or before the 15th day, before the date initially set for the trial of the action. As used in this section, discovery is considered completed on the day a response is due or on the day a deposition begins. Except as provided in subdivision (e), a continuance or postponement of the trial date does not operate to reopen discovery proceedings.

(b) The time limit on completing discovery in an action to be arbitrated under Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 is subject to Judicial Council Rule. After an award in a case ordered to judicial arbitration, completion of discovery is limited by Section 1141.24.

(c) This section does not apply to (1) summary proceedings for obtaining possession of real property governed by Chapter 4 (commencing with Section 1159) of Title 3 of Part 3, in which discovery shall be completed on or before the fifth day before the date set for trial except as provided in subdivisions (e) and (f), or (2) eminent domain proceedings governed by Title 7 (commencing with Section 1230.010) of Part 3.

(d) Any party shall be entitled as a matter of right to complete discovery proceedings pertaining to a witness identified under Section 2034 on or before the 15th day, and to have motions concerning that discovery heard on or before the 10th day, before the date initially set for the trial of the action.

(e) On motion of any party, the court may grant leave to complete discovery proceedings, or to have a motion concerning discovery heard, closer to the initial trial date, or to reopen discovery after a new trial date has been set. This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion.

In exercising its discretion to grant or deny this motion, the court shall take into consideration any matter relevant to the leave requested, including, but not limited to, the following:

(1) The necessity and the reasons for the discovery.

(2) The diligence or lack of diligence of the party seeking the discovery or the hearing of a discovery motion, and the reasons that

the discovery was not completed or that the discovery motion was not heard earlier.

(3) Any likelihood that permitting the discovery or hearing the discovery motion will prevent the case from going to trial on the date set, or otherwise interfere with the trial calendar, or result in prejudice to any other party.

(4) The length of time that has elapsed between any date previously set, and the date presently set, for the trial of the action.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to extend or to reopen discovery, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(f) Parties to the action may, with the consent of any party affected by it, enter into an agreement to extend the time for the completion of discovery proceedings or for the hearing of motions concerning discovery, or to reopen discovery after a new date for trial of the action has been set. This agreement may be informal, but it shall be confirmed in a writing that specifies the extended date. In no event shall this agreement require a court to grant a continuance or postponement of the trial of the action.

(g) When the last day to perform or complete any act provided for in this article falls on a Saturday, Sunday, or holiday as specified in Section 10, the time limit is extended until the next day not a Saturday, Sunday, or holiday.

SEC. 22. Section 2025 of the Code of Civil Procedure is amended to read:

2025. (a) Any party may obtain discovery within the scope delimited by Section 2017, and subject to the restrictions set forth in Section 2019, by taking in California the oral deposition of any person, including any party to the action. The person deposed may be a natural person, an organization such as a public or private corporation, a partnership, an association, or a governmental agency.

(b) Subject to subdivisions (f) and (t), an oral deposition may be taken as follows:

(1) The defendant may serve a deposition notice without leave of court at any time after that defendant has been served or has appeared in the action, whichever occurs first.

(2) The plaintiff may serve a deposition notice without leave of court on any date that is 20 days after the service of the summons on, or appearance by, any defendant. However, on motion with or without notice, the court, for good cause shown, may grant to a plaintiff leave to serve a deposition notice on an earlier date.

(c) A party desiring to take the oral deposition of any person shall give notice in writing in the manner set forth in subdivision (d). However, where under subdivision (d) of Section 2020 only the production by a nonparty of business records for copying is desired, a copy of the deposition subpoena shall serve as the notice of

deposition. The notice of deposition shall be given to every other party who has appeared in the action. The deposition notice, or the accompanying proof of service, shall list all the parties or attorneys for parties on whom it is served.

Where, as defined in subdivision (a) of Section 1985.3, the party giving notice of the deposition is a subpoenaing party, and the deponent is a witness commanded by a deposition subpoena to produce personal records of a consumer, the subpoenaing party shall serve on that consumer (1) a notice of the deposition, (2) the notice of privacy rights specified in subdivision (e) of Section 1985.3 and in Section 1985.6, and (3) a copy of the deposition subpoena.

(d) The deposition notice shall state all of the following:

(1) The address where the deposition will be taken.

(2) The date of the deposition, selected under subdivision (f), and the time it will commence.

(3) The name of each deponent, and the address and telephone number, if known, of any deponent who is not a party to the action. If the name of the deponent is not known, the deposition notice shall set forth instead a general description sufficient to identify the person or particular class to which the person belongs.

(4) The specification with reasonable particularity of any materials or category of materials to be produced by the deponent.

(5) Any intention to record the testimony by audiotape or videotape, in addition to recording the testimony by the stenographic method as required by paragraph (1) of subdivision (*l*).

(6) Any intention to reserve the right to use at trial a videotape deposition of a treating or consulting physician or of any expert witness under paragraph (4) of subdivision (u). In this event, the operator of the videotape camera shall be a person who is authorized to administer an oath, and shall not be financially interested in the action or be a relative or employee of any attorney of any of the parties.

If the deponent named is not a natural person, the deposition notice shall describe with reasonable particularity the matters on which examination is requested. In that event, the deponent shall designate and produce at the deposition those of its officers, directors, managing agents, employees, or agents who are most qualified to testify on its behalf as to those matters to the extent of any information known or reasonably available to the deponent. A deposition subpoena shall advise a nonparty deponent of its duty to make this designation, and shall describe with reasonable particularity the matters on which examination is requested.

If the attendance of the deponent is to be compelled by service of a deposition subpoena under Section 2020, an identical copy of that subpoena shall be served with the deposition notice.

(e) (1) The deposition of a natural person, whether or not a party to the action, shall be taken at a place that is, at the option of the party giving notice of the deposition, either within 75 miles of the

deponent's residence, or within the county where the action is pending and within 150 miles of the deponent's residence, unless the court orders otherwise under paragraph (3).

(2) The deposition of an organization that is a party to the action shall be taken at a place that is, at the option of the party giving notice of the deposition, either within 75 miles of the organization's principal executive or business office in California, or within the county where the action is pending and within 150 miles of that office. The deposition of any other organization shall be taken within 75 miles of the organization's principal executive or business office in California, unless the organization consents to a more distant place. If the organization has not designated a principal executive or business office in California, the deposition shall be taken at a place that is, at the option of the party giving notice of the deposition, either within the county where the action is pending, or within 75 miles of any executive or business office in California of the organization.

(3) A party desiring to take the deposition of a natural person who is a party to the action or an officer, director, managing agent, or employee of a party may make a motion for an order that the deponent attend for deposition at a place that is more distant than that permitted under paragraph (1). This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of any issue presented by the motion.

In exercising its discretion to grant or deny this motion, the court shall take into consideration any factor tending to show whether the interests of justice will be served by requiring the deponent's attendance at that more distant place, including, but not limited to, the following:

(A) Whether the moving party selected the forum.

(B) Whether the deponent will be present to testify at the trial of the action.

(C) The convenience of the deponent.

(D) The feasibility of conducting the deposition by written questions under Section 2028, or of using a discovery method other than a deposition.

(E) The number of depositions sought to be taken at a place more distant than that permitted under paragraph (1).

(F) The expense to the parties of requiring the deposition to be taken within the distance permitted under paragraph (1).

(G) The whereabouts of the deponent at the time for which the deposition is scheduled.

The order may be conditioned on the advancement by the moving party of the reasonable expenses and costs to the deponent for travel to the place of deposition.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to increase travel limits for party deponent, unless

it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(f) An oral deposition shall be scheduled for a date at least 10 days after service of the deposition notice. If, as defined in subdivision (a) of Section 1985.3, the party giving notice of the deposition is a subpoenaing party, and the deponent is a witness commanded by a deposition subpoena to produce personal records of a consumer, the deposition shall be scheduled for a date at least 20 days after issuance of that subpoena. However, in unlawful detainer actions, an oral deposition shall be scheduled for a date at least five days after service of the deposition notice, but not later than five days before trial.

On motion or ex parte application of any party or deponent, for good cause shown, the court may shorten or extend the time for scheduling a deposition, or may stay its taking until the determination of a motion for a protective order under subdivision (i).

(g) Any party served with a deposition notice that does not comply with subdivisions (b) to (f), inclusive, waives any error or irregularity unless that party promptly serves a written objection specifying that error or irregularity at least three calendar days prior to the date for which the deposition is scheduled, on the party seeking to take the deposition and any other attorney or party on whom the deposition notice was served. If an objection is made three calendar days before the deposition date, the objecting party shall make personal service of that objection pursuant to Section 1011 on the party who gave notice of the deposition. Any deposition taken after the service of a written objection shall not be used against the objecting party under subdivision (u) if the party did not attend the deposition and if the court determines that the objection was a valid one.

In addition to serving this written objection, a party may also move for an order staying the taking of the deposition and quashing the deposition notice. This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of any issue presented by the motion. The taking of the deposition is stayed pending the determination of this motion.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to quash a deposition notice, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(h) (1) The service of a deposition notice under subdivision (c) is effective to require any deponent who is a party to the action or an officer, director, managing agent, or employee of a party to attend and to testify, as well as to produce any document or tangible thing for inspection and copying.

(2) The attendance and testimony of any other deponent, as well as the production by the deponent of any document or tangible thing for inspection and copying, requires the service on the deponent of a deposition subpoena under Section 2020.

(i) Before, during, or after a deposition, any party, any deponent, or any other affected natural person or organization may promptly move for a protective order. The motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion.

The court, for good cause shown, may make any order that justice requires to protect any party, deponent, or other natural person or organization from unwarranted annoyance, embarrassment, or oppression, or undue burden and expense. This protective order may include, but is not limited to, one or more of the following directions:

(1) That the deposition not be taken at all.

(2) That the deposition be taken at a different time.

(3) That a videotape deposition of a treating or consulting physician or of any expert witness, intended for possible use at trial under paragraph (4) of subdivision (u), be postponed until the moving party has had an adequate opportunity to prepare, by discovery deposition of the deponent, or other means, for cross-examination.

(4) That the deposition be taken at a place other than that specified in the deposition notice, if it is within a distance permitted by subdivision (e).

(5) That the deposition be taken only on certain specified terms and conditions.

(6) That the deponent's testimony be taken by written, instead of oral, examination.

(7) That the method of discovery be interrogatories to a party instead of an oral deposition.

(8) That the testimony be recorded in a manner different from that specified in the deposition notice.

(9) That certain matters not be inquired into.

(10) That the scope of the examination be limited to certain matters.

(11) That all or certain of the writings or tangible things designated in the deposition notice not be produced, inspected, or copied.

(12) That designated persons, other than the parties to the action and their officers and counsel, be excluded from attending the deposition.

(13) That a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only to specified persons or only in a specified way.

(14) That the parties simultaneously file specified documents enclosed in sealed envelopes to be opened as directed by the court.

(15) That the deposition be sealed and thereafter opened only on order of the court.

If the motion for a protective order is denied in whole or in part, the court may order that the deponent provide or permit the discovery against which protection was sought on those terms and conditions that are just.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion for a protective order, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(j) (1) If the party giving notice of a deposition fails to attend or proceed with it, the court shall impose a monetary sanction under Section 2023 against that party, or the attorney for that party, or both, and in favor of any party attending in person or by attorney, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(2) If a deponent does not appear for a deposition because the party giving notice of the deposition failed to serve a required deposition subpoena, the court shall impose a monetary sanction under Section 2023 against that party, or the attorney for that party, or both, in favor of any other party who, in person or by attorney, attended at the time and place specified in the deposition notice in the expectation that the deponent's testimony would be taken, unless the court finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

If a deponent on whom a deposition subpoena has been served fails to attend a deposition or refuses to be sworn as a witness, the court may impose on the deponent the sanctions described in subdivision (h) of Section 2020.

(3) If, after service of a deposition notice, a party to the action or an officer, director, managing agent, or employee of a party, or a person designated by an organization that is a party under subdivision (d), without having served a valid objection under subdivision (g), fails to appear for examination, or to proceed with it, or to produce for inspection any document or tangible thing described in the deposition notice, the party giving the notice may move for an order compelling the deponent's attendance and testimony, and the production for inspection of any document or tangible thing described in the deposition notice. This motion (A) shall set forth specific facts showing good cause justifying the production for inspection of any document or tangible thing described in the deposition notice, and (B) shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by it or, when the deponent fails to attend the deposition and produce the

documents or things described in the deposition notice, by a declaration stating that the petitioner has contacted the deponent to inquire about the nonappearance. If this motion is granted, the court shall also impose a monetary sanction under Section 2023 against the deponent or the party with whom the deponent is affiliated, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust. On motion of any other party who, in person or by attorney, attended at the time and place specified in the deposition notice in the expectation that the deponent's testimony would be taken, the court shall also impose a monetary sanction under Section 2023, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

If that party or party-affiliated deponent then fails to obey an order compelling attendance, testimony, and production, the court may make those orders that are just, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Section 2023 against that party deponent or against the party with whom the deponent is affiliated. In lieu of or in addition to this sanction, the court may impose a monetary sanction under Section 2023 against that deponent or against the party with whom that party deponent is affiliated, and in favor of any party who, in person or by attorney, attended in the expectation that the deponent's testimony would be taken pursuant to that order.

(k) Except as provided in paragraph (3) of subdivision (d) of Section 2020, the deposition shall be conducted under the supervision of an officer who is authorized to administer an oath. This officer shall not be financially interested in the action and shall not be a relative or employee of any attorney of any of the parties, or of any of the parties. Any objection to the qualifications of the deposition officer is waived unless made before the deposition begins or as soon thereafter as the ground for that objection becomes known or could be discovered by reasonable diligence.

(*l*) (1) The deposition officer shall put the deponent under oath. Unless the parties agree or the court orders otherwise, the testimony, as well as any stated objections, shall be taken stenographically. The party noticing the deposition may also record the testimony by audiotape or videotape if the notice of deposition stated an intention also to record the testimony by either of those methods, or if all the parties agree that the testimony may also be recorded by either of those methods. Any other party, at that party's expense, may make a simultaneous audiotape or videotape record of the deposition, provided that other party promptly, and in no event less than three calendar days before the date for which the deposition is scheduled, serves a written notice of this intention to audiotape or videotape the deposition testimony on the party or attorney who noticed the deposition, on all other parties or attorneys on whom the deposition

notice was served under subdivision (c), and on any deponent whose attendance is being compelled by a deposition subpoena under Section 2020. If this notice is given three calendar days before the deposition date, it shall be made by personal service under Section 1011. Examination and cross-examination of the deponent shall proceed as permitted at trial under the provisions of the Evidence Code.

(2) If the deposition is being recorded by means of audiotape or videotape, the following procedure shall be observed:

(A) The area used for recording the deponent's oral testimony shall be suitably large, adequately lighted, and reasonably quiet.

(B) The operator of the recording equipment shall be competent to set up, operate, and monitor the equipment in the manner prescribed in this subdivision. The operator may be an employee of the attorney taking the deposition unless the operator is also the deposition officer. However, if a videotape of deposition testimony is to be used under paragraph (4) of subdivision (u), the operator of the recording equipment shall be a person who is authorized to administer an oath, and shall not be financially interested in the action or be a relative or employee of any attorney of any of the parties, unless all parties attending the deposition agree on the record to waive these qualifications and restrictions.

(C) The operator shall not distort the appearance or the demeanor of participants in the deposition by the use of camera or sound recording techniques.

(D) The deposition shall begin with an oral or written statement on camera or on the audiotape that includes the operator's name and business address, the name and business address of the operator's employer, the date, time, and place of the deposition, the caption of the case, the name of the deponent, a specification of the party on whose behalf the deposition is being taken, and any stipulations by the parties.

(E) Counsel for the parties shall identify themselves on camera or on the audiotape.

(F) The oath shall be administered to the deponent on camera or on the audiotape.

(G) If the length of a deposition requires the use of more than one unit of tape, the end of each unit and the beginning of each succeeding unit shall be announced on camera or on the audiotape.

(H) At the conclusion of a deposition, a statement shall be made on camera or on the audiotape that the deposition is ended and shall set forth any stipulations made by counsel concerning the custody of the audiotape or videotape recording and the exhibits, or concerning other pertinent matters.

(I) A party intending to offer an audiotaped or videotaped recording of a deposition in evidence under subdivision (u) shall notify the court and all parties in writing of that intent and of the parts of the deposition to be offered within sufficient time for objections

to be made and ruled on by the judge to whom the case is assigned for trial or hearing, and for any editing of the tape. Objections to all or part of the deposition shall be made in writing. The court may permit further designations of testimony and objections as justice may require. With respect to those portions of an audiotaped or videotaped deposition that are not designated by any party or that are ruled to be objectionable, the court may order that the party offering the recording of the deposition at the trial or hearing suppress those portions, or that an edited version of the deposition tape be prepared for use at the trial or hearing. The original audiotape or videotape of the deposition shall be preserved unaltered. If no stenographic record of the deposition testimony has previously been made, the party offering a videotape or an audiotape recording of that testimony under subdivision (u) shall accompany that offer with a stenographic transcript prepared from that recording.

(3) In lieu of participating in the oral examination, parties may transmit written questions in a sealed envelope to the party taking the deposition for delivery to the deposition officer, who shall unseal the envelope and propound them to the deponent after the oral examination has been completed.

(m) (1) The protection of information from discovery on the ground that it is privileged or that it is protected work product under Section 2018 is waived unless a specific objection to its disclosure is timely made during the deposition.

(2) Errors and irregularities of any kind occurring at the oral examination that might be cured if promptly presented are waived unless a specific objection to them is timely made during the deposition. These errors and irregularities include, but are not limited to, those relating to the manner of taking the deposition, to the oath or affirmation administered, to the conduct of a party, attorney, deponent, or deposition officer, or to the form of any question or answer. Unless the objecting party demands that the taking of the deposition be suspended to permit a motion for a protective order under subdivision (n), the deposition shall proceed subject to the objection.

(3) Objections to the competency of the deponent, or to the relevancy, materiality, or admissibility at trial of the testimony or of the materials produced are unnecessary and are not waived by failure to make them before or during the deposition.

(4) If a deponent fails to answer any question or to produce any document or tangible thing under the deponent's control that is specified in the deposition notice or a deposition subpoena, the party seeking that answer or production may adjourn the deposition or complete the examination on other matters without waiving the right at a later time to move for an order compelling that answer or production under subdivision (o).

(n) On demand of any party or the deponent, the deposition officer shall suspend the taking of testimony to enable that party or deponent to move for a protective order on the ground that the examination is being conducted in bad faith or in a manner that unreasonably annoys, embarrasses, or oppresses that deponent or party. This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion. The court, for good cause shown, may terminate the examination or may limit the scope and manner of taking the deposition as provided in subdivision (i). If the order terminates the examination, the deposition shall not thereafter be resumed, except on order of the court.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion for this protective order, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(o) If a deponent fails to answer any question or to produce any document or tangible thing under the deponent's control that is specified in the deposition notice or a deposition subpoena, the party seeking discovery may move the court for an order compelling that answer or production. This motion shall be made no later than 60 days after the completion of the record of the deposition, and shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion. Notice of this motion shall be given to all parties, and to the deponent either orally at the examination, or by subsequent service in writing. If the notice of the motion is given orally, the deposition officer shall direct the deponent to attend a session of the court at the time specified in the notice. Not less than five days prior to the hearing on this motion, the moving party shall lodge with the court a certified copy of any parts of the stenographic transcript of the deposition that are relevant to the motion. If a deposition is recorded by audiotape or videotape, the moving party is required to lodge a certified copy of a transcript of any parts of the deposition that are relevant to the motion. If the court determines that the answer or production sought is subject to discovery, it shall order that the answer be given or the production be made on the resumption of the deposition.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel answer or production, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

If a deponent fails to obey an order entered under this subdivision, the failure may be considered a contempt of court. In addition, if the disobedient deponent is a party to the action or an officer, director, managing agent, or employee of a party, the court may make those

orders that are just against the disobedient party, or against the party with whom the disobedient deponent is affiliated, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Section 2023. In lieu of or in addition to this sanction, the court may impose a monetary sanction under Section 2023 against that party deponent or against any party with whom the deponent is affiliated.

(p) Unless the parties agree otherwise, the testimony at any deposition recorded by stenographic means shall be transcribed. The party noticing the deposition shall bear the cost of that transcription, unless the court, on motion and for good cause shown, orders that the cost be borne or shared by another party. Any other party, at that party's expense, may obtain a copy of the transcript. If the deposition officer receives a request from a party for an original or a copy of the deposition transcript, or any portion thereof, and the document will be available to that party prior to the time the original or copy would be available to any other party, the deposition officer shall immediately notify all other parties attending the deposition of the request, and shall, upon request by any party other than the party making the original request, make that copy of the full or partial deposition transcript available to all parties at the same time. Stenographic notes of depositions shall be retained by the reporter for a period of not less than eight years from the date of the deposition, where no transcript is produced, and not less than one year from the date on which the transcript is produced. Those notes may be either on paper or electronic media, as long as it allows for satisfactory production of a transcript at any time during the periods specified. At the request of any other party to the action, including a party who did not attend the taking of the deposition testimony, any party who records or causes the recording of that testimony by means of audiotape or videotape shall promptly (1) permit that other party to hear the audiotape or to view the videotape, and (2) furnish a copy of the audiotape or videotape to that other party on receipt of payment of the reasonable cost of making that copy of the tape.

If the testimony at the deposition is recorded both stenographically, and by audiotape or videotape, the stenographic transcript is the official record of that testimony for the purpose of the trial and any subsequent hearing or appeal.

(q) (1) If the deposition testimony is stenographically recorded, the deposition officer shall send written notice to the deponent and to all parties attending the deposition when the original transcript of the testimony for each session of the deposition is available for reading, correcting, and signing, unless the deponent and the attending parties agree on the record that the reading, correcting, and signing of the transcript of the testimony will be waived or that the reading, correcting, and signing of a transcript of the testimony will take place after the entire deposition has been concluded or at some other specific time. For 30 days following each such notice,

unless the attending parties and the deponent agree on the record or otherwise in writing to a longer or shorter time period, the deponent may change the form or the substance of the answer to a question, and may either approve the transcript of the deposition by signing it, or refuse to approve the transcript by not signing it.

Alternatively, within this same period, the deponent may change the form or the substance of the answer to any question and may approve or refuse to approve the transcript by means of a letter to the deposition officer signed by the deponent which is mailed by certified or registered mail with return receipt requested. A copy of that letter shall be sent by first-class mail to all parties attending the deposition. For good cause shown, the court may shorten the 30-day period for making changes, approving, or refusing to approve the transcript.

The deposition officer shall indicate on the original of the transcript, if the deponent has not already done so at the office of the deposition officer, any action taken by the deponent and indicate on the original of the transcript, the deponent's approval of, or failure or refusal to approve, the transcript. The deposition officer shall also notify in writing the parties attending the deposition of any changes which the deponent timely made in person. If the deponent fails or refuses to approve the transcript within the allotted period, the deposition shall be given the same effect as though it had been approved, subject to any changes timely made by the deponent. However, on a seasonable motion to suppress the deposition, accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion, the court may determine that the reasons given for the failure or refusal to approve the transcript require rejection of the deposition in whole or in part.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to suppress a deposition, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(2) If there is no stenographic transcription of the deposition, the deposition officer shall send written notice to the deponent and to all parties attending the deposition that the recording is available for review, unless the deponent and all these parties agree on the record to waive the hearing or viewing of an audiotape or videotape recording of the testimony. For 30 days following this notice the deponent, either in person or by signed letter to the deposition officer, may change the substance of the answer to any question.

The deposition officer shall set forth in a writing to accompany the recording any changes made by the deponent, as well as either the deponent's signature identifying the deposition as his or her own, or a statement of the deponent's failure to supply the signature, or to contact the officer within the allotted period. When a deponent fails

to contact the officer within the allotted period, or expressly refuses by a signature to identify the deposition as his or her own, the deposition shall be given the same effect as though signed. However, on a seasonable motion to suppress the deposition, accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion, the court may determine that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to suppress a deposition, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(r) (1) The deposition officer shall certify on the transcript of the deposition, or in a writing accompanying an audiotaped or videotaped deposition as described in paragraph (2) of subdivision (q), that the deponent was duly sworn and that the transcript or recording is a true record of the testimony given and of any changes made by the deponent.

(2) When prepared as a rough draft transcript, the transcript of the deposition may not be certified and may not be used, cited, or transcribed as the certified transcript of the deposition proceedings. The rough draft transcript may not be cited or used in any way or at any time to rebut or contradict the certified transcript of deposition proceedings as provided by the deposition officer.

(s) (1) The certified transcript of a deposition shall not be filed with the court. Instead, the deposition officer shall securely seal that transcript in an envelope or package endorsed with the title of the action and marked: "Deposition of (here insert name of deponent)," and shall promptly transmit it to the attorney for the party who noticed the deposition. This attorney shall store it under conditions that will protect it against loss, destruction, or tampering.

The attorney to whom the transcript of a deposition is transmitted shall retain custody of it until six months after final disposition of the action. At that time, the transcript may be destroyed, unless the court, on motion of any party and for good cause shown, orders that the transcript be preserved for a longer period.

(2) An audiotape or videotape record of deposition testimony, including a certified tape made by an operator qualified under subparagraph (B) of paragraph (2) of subdivision (*l*), shall not be filed with the court. Instead, the operator shall retain custody of that record and shall store it under conditions that will protect it against loss, destruction, or tampering, and preserve as far as practicable the quality of the tape and the integrity of the testimony and images it contains.

At the request of any party to the action, including a party who did not attend the taking of the deposition testimony, or at the request of the deponent, that operator shall promptly (A) permit the one

making the request to hear or to view the tape on receipt of payment of a reasonable charge for providing the facilities for hearing or viewing the tape, and (B) furnish a copy of the audiotape or the videotape recording to the one making the request on receipt of payment of the reasonable cost of making that copy of the tape.

The attorney or operator who has custody of an audiotape or videotape record of deposition testimony shall retain custody of it until six months after final disposition of the action. At that time, the audiotape or videotape may be destroyed or erased, unless the court, on motion of any party and for good cause shown, orders that the tape be preserved for a longer period.

(t) Once any party has taken the deposition of any natural person, including that of a party to the action, neither the party who gave, nor any other party who has been served with a deposition notice pursuant to subdivision (c) may take a subsequent deposition of that deponent. However, for good cause shown, the court may grant leave to take a subsequent deposition, and the parties, with the consent of any deponent who is not a party, may stipulate that a subsequent deposition be taken. This subdivision does not preclude taking one subsequent deposition of a natural person who has previously been examined (1) as a result of that person's designation to testify on behalf of an organization under subdivision (d), or (2) for the limited purpose of discovering pursuant to Section 485.230 the identity, location, and value of property in which the deponent has an interest. This subdivision does not authorize the taking of more than one deposition for the limited purpose of Section 485.230.

(u) At the trial or any other hearing in the action, any part or all of a deposition may be used against any party who was present or represented at the taking of the deposition, or who had due notice of the deposition and did not serve a valid objection under subdivision (g), so far as admissible under the rules of evidence applied as though the deponent were then present and testifying as a witness, in accordance with the following provisions:

(1) Any party may use a deposition for the purpose of contradicting or impeaching the testimony of the deponent as a witness, or for any other purpose permitted by the Evidence Code.

(2) An adverse party may use for any purpose, a deposition of a party to the action, or of anyone who at the time of taking the deposition was an officer, director, managing agent, employee, agent, or designee under subdivision (d) of a party. It is not ground for objection to the use of a deposition of a party under this paragraph by an adverse party that the deponent is available to testify, has testified, or will testify at the trial or other hearing.

(3) Any party may use for any purpose the deposition of any person or organization, including that of any party to the action, if the court finds any of the following:

(A) The deponent resides more than 150 miles from the place of the trial or other hearing.

(B) The deponent, without the procurement or wrongdoing of the proponent of the deposition for the purpose of preventing testimony in open court, is (i) exempted or precluded on the ground of privilege from testifying concerning the matter to which the deponent's testimony is relevant, (ii) disqualified from testifying, (iii) dead or unable to attend or testify because of existing physical or mental illness or infirmity, (iv) absent from the trial or other hearing and the court is unable to compel the deponent's attendance by its process, or (v) absent from the trial or other hearing and the proponent of the deposition has exercised reasonable diligence but has been unable to procure the deponent's attendance by the court's process.

(C) Exceptional circumstances exist that make it desirable to allow the use of any deposition in the interests of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court.

(4) Any party may use a videotape deposition of a treating or consulting physician or of any expert witness even though the deponent is available to testify if the deposition notice under subdivision (d) reserved the right to use the deposition at trial, and if that party has complied with subparagraph (I) of paragraph (2) of subdivision (*l*).

(5) Subject to the requirements of this section, a party may offer in evidence all or any part of a deposition, and if the party introduces only part of the deposition, any other party may introduce any other parts that are relevant to the parts introduced.

(6) Substitution of parties does not affect the right to use depositions previously taken.

(7) When an action has been brought in any court of the United States or of any state, and another action involving the same subject matter is subsequently brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the initial action may be used in the subsequent action as if originally taken in that subsequent action. A deposition previously taken may also be used as permitted by the Evidence Code.

SEC. 22.1. Section 2025 of the Code of Civil Procedure is amended to read:

2025. (a) Any party may obtain discovery within the scope delimited by Section 2017, and subject to the restrictions set forth in Section 2019, by taking in California the oral deposition of any person, including any party to the action. The person deposed may be a natural person, an organization such as a public or private corporation, a partnership, an association, or a governmental agency.

(b) Subject to subdivisions (f) and (t), an oral deposition may be taken as follows:

(1) The defendant may serve a deposition notice without leave of court at any time after that defendant has been served or has appeared in the action, whichever occurs first.

(2) The plaintiff may serve a deposition notice without leave of court on any date that is 20 days after the service of the summons on, or appearance by, any defendant. However, on motion with or without notice, the court, for good cause shown, may grant to a plaintiff leave to serve a deposition notice on an earlier date.

(c) A party desiring to take the oral deposition of any person shall give notice in writing in the manner set forth in subdivision (d). However, where under subdivision (d) of Section 2020 only the production by a nonparty of business records for copying is desired, a copy of the deposition subpoena shall serve as the notice of deposition. The notice of deposition shall be given to every other party who has appeared in the action. The deposition notice, or the accompanying proof of service, shall list all the parties or attorneys for parties on whom it is served.

Where, as defined in subdivision (a) of Section 1985.3, the party giving notice of the deposition is a subpoenaing party, and the deponent is a witness commanded by a deposition subpoena to produce personal records of a consumer, the subpoenaing party shall serve on that consumer (1) a notice of the deposition, (2) the notice of privacy rights specified in subdivision (e) of Section 1985.3 and in Section 1985.6, and (3) a copy of the deposition subpoena.

(d) The deposition notice shall state all of the following:

(1) The address where the deposition will be taken.

(2) The date of the deposition, selected under subdivision (f), and the time it will commence.

(3) The name of each deponent, and the address and telephone number, if known, of any deponent who is not a party to the action. If the name of the deponent is not known, the deposition notice shall set forth instead a general description sufficient to identify the person or particular class to which the person belongs.

(4) The specification with reasonable particularity of any materials or category of materials to be produced by the deponent.

(5) Any intention to record the testimony by audiotape or videotape, in addition to recording the testimony by the stenographic method as required by paragraph (1) of subdivision (*l*), and any intention to record the testimony by stenographic method, through the instant visual display of the testimony. In the latter event, a copy of the deposition notice shall also be given to the deposition officer. Any offer to provide the instant visual display of the testimony, or to provide rough draft transcripts to any party which is accepted prior to, or offered at, the deposition shall also be made by the deposition officer at the deposition to all parties in attendance.

(6) Any intention to reserve the right to use at trial a videotape deposition of a treating or consulting physician or of any expert witness under paragraph (4) of subdivision (u). In this event, the

operator of the videotape camera shall be a person who is authorized to administer an oath, and shall not be financially interested in the action or be a relative or employee of any attorney of any of the parties.

If the deponent named is not a natural person, the deposition notice shall describe with reasonable particularity the matters on which examination is requested. In that event, the deponent shall designate and produce at the deposition those of its officers, directors, managing agents, employees, or agents who are most qualified to testify on its behalf as to those matters to the extent of any information known or reasonably available to the deponent. A deposition subpoena shall advise a nonparty deponent of its duty to make this designation, and shall describe with reasonable particularity the matters on which examination is requested.

If the attendance of the deponent is to be compelled by service of a deposition subpoena under Section 2020, an identical copy of that subpoena shall be served with the deposition notice.

(e) (1) The deposition of a natural person, whether or not a party to the action, shall be taken at a place that is, at the option of the party giving notice of the deposition, either within 75 miles of the deponent's residence, or within the county where the action is pending and within 150 miles of the deponent's residence, unless the court orders otherwise under paragraph (3).

(2) The deposition of an organization that is a party to the action shall be taken at a place that is, at the option of the party giving notice of the deposition, either within 75 miles of the organization's principal executive or business office in California, or within the county where the action is pending and within 150 miles of that office. The deposition of any other organization shall be taken within 75 miles of the organization's principal executive or business office in California, unless the organization consents to a more distant place. If the organization has not designated a principal executive or business office in California, the deposition shall be taken at a place that is, at the option of the party giving notice of the deposition, either within the county where the action is pending, or within 75 miles of any executive or business office in California of the organization.

(3) A party desiring to take the deposition of a natural person who is a party to the action or an officer, director, managing agent, or employee of a party may make a motion for an order that the deponent attend for deposition at a place that is more distant than that permitted under paragraph (1). This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of any issue presented by the motion.

In exercising its discretion to grant or deny this motion, the court shall take into consideration any factor tending to show whether the interests of justice will be served by requiring the deponent's

attendance at that more distant place, including, but not limited to, the following:

(A) Whether the moving party selected the forum.

(B) Whether the deponent will be present to testify at the trial of the action.

(C) The convenience of the deponent.

(D) The feasibility of conducting the deposition by written questions under Section 2028, or of using a discovery method other than a deposition.

(E) The number of depositions sought to be taken at a place more distant than that permitted under paragraph (1).

(F) The expense to the parties of requiring the deposition to be taken within the distance permitted under paragraph (1).

(G) The whereabouts of the deponent at the time for which the deposition is scheduled.

The order may be conditioned on the advancement by the moving party of the reasonable expenses and costs to the deponent for travel to the place of deposition.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to increase travel limits for party deponent, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(f) An oral deposition shall be scheduled for a date at least 10 days after service of the deposition notice. If, as defined in subdivision (a) of Section 1985.3, the party giving notice of the deposition is a subpoenaing party, and the deponent is a witness commanded by a deposition subpoena to produce personal records of a consumer, the deposition shall be scheduled for a date at least 20 days after issuance of that subpoena. However, in unlawful detainer actions, an oral deposition shall be scheduled for a date at least five days after service of the deposition notice, but not later than five days before trial.

On motion or ex parte application of any party or deponent, for good cause shown, the court may shorten or extend the time for scheduling a deposition, or may stay its taking until the determination of a motion for a protective order under subdivision (i).

(g) Any party served with a deposition notice that does not comply with subdivisions (b) to (f), inclusive, waives any error or irregularity unless that party promptly serves a written objection specifying that error or irregularity at least three calendar days prior to the date for which the deposition is scheduled, on the party seeking to take the deposition and any other attorney or party on whom the deposition notice was served. If an objection is made three calendar days before the deposition date, the objecting party shall make personal service of that objection pursuant to Section 1011 on the party who gave notice of the deposition. Any deposition taken after

the service of a written objection shall not be used against the objecting party under subdivision (u) if the party did not attend the deposition and if the court determines that the objection was a valid one.

In addition to serving this written objection, a party may also move for an order staying the taking of the deposition and quashing the deposition notice. This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of any issue presented by the motion. The taking of the deposition is stayed pending the determination of this motion.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to quash a deposition notice, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(h) (1) The service of a deposition notice under subdivision (c) is effective to require any deponent who is a party to the action or an officer, director, managing agent, or employee of a party to attend and to testify, as well as to produce any document or tangible thing for inspection and copying.

(2) The attendance and testimony of any other deponent, as well as the production by the deponent of any document or tangible thing for inspection and copying, requires the service on the deponent of a deposition subpoena under Section 2020.

(i) Before, during, or after a deposition, any party, any deponent, or any other affected natural person or organization may promptly move for a protective order. The motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion.

The court, for good cause shown, may make any order that justice requires to protect any party, deponent, or other natural person or organization from unwarranted annoyance, embarrassment, or oppression, or undue burden and expense. This protective order may include, but is not limited to, one or more of the following directions:

(1) That the deposition not be taken at all.

(2) That the deposition be taken at a different time.

(3) That a videotape deposition of a treating or consulting physician or of any expert witness, intended for possible use at trial under paragraph (4) of subdivision (u), be postponed until the moving party has had an adequate opportunity to prepare, by discovery deposition of the deponent, or other means, for cross-examination.

(4) That the deposition be taken at a place other than that specified in the deposition notice, if it is within a distance permitted by subdivision (e).

(5) That the deposition be taken only on certain specified terms and conditions.

(6) That the deponent's testimony be taken by written, instead of oral, examination.

(7) That the method of discovery be interrogatories to a party instead of an oral deposition.

(8) That the testimony be recorded in a manner different from that specified in the deposition notice.

(9) That certain matters not be inquired into.

(10) That the scope of the examination be limited to certain matters.

(11) That all or certain of the writings or tangible things designated in the deposition notice not be produced, inspected, or copied.

(12) That designated persons, other than the parties to the action and their officers and counsel, be excluded from attending the deposition.

(13) That a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only to specified persons or only in a specified way.

(14) That the parties simultaneously file specified documents enclosed in sealed envelopes to be opened as directed by the court.

(15) That the deposition be sealed and thereafter opened only on order of the court.

If the motion for a protective order is denied in whole or in part, the court may order that the deponent provide or permit the discovery against which protection was sought on those terms and conditions that are just.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion for a protective order, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(j) (1) If the party giving notice of a deposition fails to attend or proceed with it, the court shall impose a monetary sanction under Section 2023 against that party, or the attorney for that party, or both, and in favor of any party attending in person or by attorney, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(2) If a deponent does not appear for a deposition because the party giving notice of the deposition failed to serve a required deposition subpoena, the court shall impose a monetary sanction under Section 2023 against that party, or the attorney for that party, or both, in favor of any other party who, in person or by attorney, attended at the time and place specified in the deposition notice in the expectation that the deponent's testimony would be taken, unless the court finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

If a deponent on whom a deposition subpoena has been served fails to attend a deposition or refuses to be sworn as a witness, the court may impose on the deponent the sanctions described in subdivision (h) of Section 2020.

(3) If, after service of a deposition notice, a party to the action or an officer, director, managing agent, or employee of a party, or a person designated by an organization that is a party under subdivision (d), without having served a valid objection under subdivision (g), fails to appear for examination, or to proceed with it, or to produce for inspection any document or tangible thing described in the deposition notice, the party giving the notice may move for an order compelling the deponent's attendance and testimony, and the production for inspection of any document or tangible thing described in the deposition notice. This motion (A) shall set forth specific facts showing good cause justifying the production for inspection of any document or tangible thing described in the deposition notice, and (B) shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by it or, when the deponent fails to attend the deposition and produce the documents or things described in the deposition notice, by a declaration stating that the petitioner has contacted the deponent to inquire about the nonappearance. If this motion is granted, the court shall also impose a monetary sanction under Section 2023 against the deponent or the party with whom the deponent is affiliated, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust. On motion of any other party who, in person or by attorney, attended at the time and place specified in the deposition notice in the expectation that the deponent's testimony would be taken, the court shall also impose a monetary sanction under Section 2023, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

If that party or party-affiliated deponent then fails to obey an order compelling attendance, testimony, and production, the court may make those orders that are just, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Section 2023 against that party deponent or against the party with whom the deponent is affiliated. In lieu of or in addition to this sanction, the court may impose a monetary sanction under Section 2023 against that deponent or against the party with whom that party deponent is affiliated, and in favor of any party who, in person or by attorney, attended in the expectation that the deponent's testimony would be taken pursuant to that order.

(k) Except as provided in paragraph (3) of subdivision (d) of Section 2020, the deposition shall be conducted under the supervision of an officer who is authorized to administer an oath. This officer shall

not be financially interested in the action and shall not be a relative or employee of any attorney of any of the parties, or of any of the parties. Any objection to the qualifications of the deposition officer is waived unless made before the deposition begins or as soon thereafter as the ground for that objection becomes known or could be discovered by reasonable diligence.

(*l*) (1) The deposition officer shall put the deponent under oath. Unless the parties agree or the court orders otherwise, the testimony, as well as any stated objections, shall be taken stenographically. The party noticing the deposition may also record the testimony by audiotape or videotape if the notice of deposition stated an intention also to record the testimony by either of those methods, or if all the parties agree that the testimony may also be recorded by either of those methods. Any other party, at that party's expense, may make a simultaneous audiotape or videotape record of the deposition, provided that other party promptly, and in no event less than three calendar days before the date for which the deposition is scheduled, serves a written notice of this intention to audiotape or videotape the deposition testimony on the party or attorney who noticed the deposition, on all other parties or attorneys on whom the deposition notice was served under subdivision (c), and on any deponent whose attendance is being compelled by a deposition subpoena under Section 2020. If this notice is given three calendar days before the deposition date, it shall be made by personal service under Section 1011. Examination and cross-examination of the deponent shall proceed as permitted at trial under the provisions of the Evidence Code.

(2) If the deposition is being recorded by means of audiotape or videotape, the following procedure shall be observed:

(A) The area used for recording the deponent's oral testimony shall be suitably large, adequately lighted, and reasonably quiet.

(B) The operator of the recording equipment shall be competent to set up, operate, and monitor the equipment in the manner prescribed in this subdivision. The operator may be an employee of the attorney taking the deposition unless the operator is also the deposition officer. However, if a videotape of deposition testimony is to be used under paragraph (4) of subdivision (u), the operator of the recording equipment shall be a person who is authorized to administer an oath, and shall not be financially interested in the action or be a relative or employee of any attorney of any of the parties, unless all parties attending the deposition agree on the record to waive these qualifications and restrictions.

(C) The operator shall not distort the appearance or the demeanor of participants in the deposition by the use of camera or sound recording techniques.

(D) The deposition shall begin with an oral or written statement on camera or on the audiotape that includes the operator's name and business address, the name and business address of the operator's

employer, the date, time, and place of the deposition, the caption of the case, the name of the deponent, a specification of the party on whose behalf the deposition is being taken, and any stipulations by the parties.

(E) Counsel for the parties shall identify themselves on camera or on the audiotape.

(F) The oath shall be administered to the deponent on camera or on the audiotape.

(G) If the length of a deposition requires the use of more than one unit of tape, the end of each unit and the beginning of each succeeding unit shall be announced on camera or on the audiotape.

(H) At the conclusion of a deposition, a statement shall be made on camera or on the audiotape that the deposition is ended and shall set forth any stipulations made by counsel concerning the custody of the audiotape or videotape recording and the exhibits, or concerning other pertinent matters.

(I) A party intending to offer an audiotaped or videotaped recording of a deposition in evidence under subdivision (u) shall notify the court and all parties in writing of that intent and of the parts of the deposition to be offered within sufficient time for objections to be made and ruled on by the judge to whom the case is assigned for trial or hearing, and for any editing of the tape. Objections to all or part of the deposition shall be made in writing. The court may permit further designations of testimony and objections as justice may require. With respect to those portions of an audiotaped or videotaped deposition that are not designated by any party or that are ruled to be objectionable, the court may order that the party offering the recording of the deposition at the trial or hearing suppress those portions, or that an edited version of the deposition tape be prepared for use at the trial or hearing. The original audiotape or videotape of the deposition shall be preserved unaltered. If no stenographic record of the deposition testimony has previously been made, the party offering a videotape or an audiotape recording of that testimony under subdivision (u) shall accompany that offer with a stenographic transcript prepared from that recording.

(3) In lieu of participating in the oral examination, parties may transmit written questions in a sealed envelope to the party taking the deposition for delivery to the deposition officer, who shall unseal the envelope and propound them to the deponent after the oral examination has been completed.

(m) (1) The protection of information from discovery on the ground that it is privileged or that it is protected work product under Section 2018 is waived unless a specific objection to its disclosure is timely made during the deposition.

(2) Errors and irregularities of any kind occurring at the oral examination that might be cured if promptly presented are waived unless a specific objection to them is timely made during the

deposition. These errors and irregularities include, but are not limited to, those relating to the manner of taking the deposition, to the oath or affirmation administered, to the conduct of a party, attorney, deponent, or deposition officer, or to the form of any question or answer. Unless the objecting party demands that the taking of the deposition be suspended to permit a motion for a protective order under subdivision (n), the deposition shall proceed subject to the objection.

(3) Objections to the competency of the deponent, or to the relevancy, materiality, or admissibility at trial of the testimony or of the materials produced are unnecessary and are not waived by failure to make them before or during the deposition.

(4) If a deponent fails to answer any question or to produce any document or tangible thing under the deponent's control that is specified in the deposition notice or a deposition subpoena, the party seeking that answer or production may adjourn the deposition or complete the examination on other matters without waiving the right at a later time to move for an order compelling that answer or production under subdivision (o).

(n) The deposition officer shall not suspend the taking of testimony without stipulation of the party conducting the deposition and the deponent unless any party attending the deposition or the deponent demands the taking of testimony be suspended to enable that party or deponent to move for a protective order on the ground that the examination is being conducted in bad faith or in a manner that unreasonably annoys, embarrasses, or oppresses that deponent or party. This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion. The court, for good cause shown, may terminate the examination or may limit the scope and manner of taking the deposition as provided in subdivision (i). If the order terminates the examination, the deposition shall not thereafter be resumed, except on order of the court.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion for this protective order, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(o) If a deponent fails to answer any question or to produce any document or tangible thing under the deponent's control that is specified in the deposition notice or a deposition subpoena, the party seeking discovery may move the court for an order compelling that answer or production. This motion shall be made no later than 60 days after the completion of the record of the deposition, and shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion. Notice of this motion shall be given to all parties, and to the deponent either orally at the examination, or by subsequent

service in writing. If the notice of the motion is given orally, the deposition officer shall direct the deponent to attend a session of the court at the time specified in the notice. Not less than five days prior to the hearing on this motion, the moving party shall lodge with the court a certified copy of any parts of the stenographic transcript of the deposition that are relevant to the motion. If a deposition is recorded by audiotape or videotape, the moving party is required to lodge a certified copy of a transcript of any parts of the deposition that are relevant to the motion. If the court determines that the answer or production sought is subject to discovery, it shall order that the answer be given or the production be made on the resumption of the deposition.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel answer or production, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

If a deponent fails to obey an order entered under this subdivision, the failure may be considered a contempt of court. In addition, if the disobedient deponent is a party to the action or an officer, director, managing agent, or employee of a party, the court may make those orders that are just against the disobedient party, or against the party with whom the disobedient deponent is affiliated, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Section 2023. In lieu of or in addition to this sanction, the court may impose a monetary sanction under Section 2023 against that party deponent or against any party with whom the deponent is affiliated.

(p) Unless the parties agree otherwise, the testimony at any deposition recorded by stenographic means shall be transcribed. The party noticing the deposition shall bear the cost of that transcription, unless the court, on motion and for good cause shown, orders that the cost be borne or shared by another party. Any other party, at that party's expense, may obtain a copy of the transcript. If the deposition officer receives a request from a party for an original or a copy of the deposition transcript, or any portion thereof, and the document will be available to that party prior to the time the original or copy would be available to any other party, the deposition officer shall immediately notify all other parties attending the deposition of the request, and shall, upon request by any party other than the party making the original request, make that copy of the full or partial deposition transcript available to all parties at the same time. Stenographic notes of depositions shall be retained by the reporter for a period of not less than eight years from the date of the deposition, where no transcript is produced, and not less than one year from the date on which the transcript is produced. Those notes may be either on paper or electronic media, as long as it allows for satisfactory production of a transcript at any time during the periods

specified. At the request of any other party to the action, including a party who did not attend the taking of the deposition testimony, any party who records or causes the recording of that testimony by means of audiotape or videotape shall promptly (1) permit that other party to hear the audiotape or to view the videotape, and (2) furnish a copy of the audiotape or videotape to that other party on receipt of payment of the reasonable cost of making that copy of the tape.

If the testimony at the deposition is recorded both stenographically, and by audiotape or videotape, the stenographic transcript is the official record of that testimony for the purpose of the trial and any subsequent hearing or appeal.

(q) (1) If the deposition testimony is stenographically recorded, the deposition officer shall send written notice to the deponent and to all parties attending the deposition when the original transcript of the testimony for each session of the deposition is available for reading, correcting, and signing, unless the deponent and the attending parties agree on the record that the reading, correcting, and signing of the transcript of the testimony will be waived or that the reading, correcting, and signing of a transcript of the testimony will take place after the entire deposition has been concluded or at some other specific time. For 30 days following each such notice, unless the attending parties and the deponent agree on the record or otherwise in writing to a longer or shorter time period, the deponent may change the form or the substance of the answer to a question, and may either approve the transcript of the deposition by signing it, or refuse to approve the transcript by not signing it.

Alternatively, within this same period, the deponent may change the form or the substance of the answer to any question and may approve or refuse to approve the transcript by means of a letter to the deposition officer signed by the deponent which is mailed by certified or registered mail with return receipt requested. A copy of that letter shall be sent by first-class mail to all parties attending the deposition. For good cause shown, the court may shorten the 30-day period for making changes, approving, or refusing to approve the transcript.

The deposition officer shall indicate on the original of the transcript, if the deponent has not already done so at the office of the deposition officer, any action taken by the deponent and indicate on the original of the transcript, the deponent's approval of, or failure or refusal to approve, the transcript. The deposition officer shall also notify in writing the parties attending the deposition of any changes which the deponent timely made in person. If the deponent fails or refuses to approve the transcript within the allotted period, the deposition shall be given the same effect as though it had been approved, subject to any changes timely made by the deponent. However, on a seasonable motion to suppress the deposition, accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented

by the motion, the court may determine that the reasons given for the failure or refusal to approve the transcript require rejection of the deposition in whole or in part.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to suppress a deposition, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(2) If there is no stenographic transcription of the deposition, the deposition officer shall send written notice to the deponent and to all parties attending the deposition that the recording is available for review, unless the deponent and all these parties agree on the record to waive the hearing or viewing of an audiotape or videotape recording of the testimony. For 30 days following this notice the deponent, either in person or by signed letter to the deposition officer, may change the substance of the answer to any question.

The deposition officer shall set forth in a writing to accompany the recording any changes made by the deponent, as well as either the deponent's signature identifying the deposition as his or her own, or a statement of the deponent's failure to supply the signature, or to contact the officer within the allotted period. When a deponent fails to contact the officer within the allotted period, or expressly refuses by a signature to identify the deposition as his or her own, the deposition shall be given the same effect as though signed. However, on a seasonable motion to suppress the deposition, accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion, the court may determine that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to suppress a deposition, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(r) (1) The deposition officer shall certify on the transcript of the deposition, or in a writing accompanying an audiotaped or videotaped deposition as described in paragraph (2) of subdivision (q), that the deponent was duly sworn and that the transcript or recording is a true record of the testimony given.

(2) When prepared as a rough draft transcript, the transcript of the deposition may not be certified and may not be used, cited, or transcribed as the certified transcript of the deposition proceedings. The rough draft transcript may not be cited or used in any way or at any time to rebut or contradict the certified transcript of deposition proceedings as provided by the deposition officer.

(s) (1) The certified transcript of a deposition shall not be filed with the court. Instead, the deposition officer shall securely seal that transcript in an envelope or package endorsed with the title of the

action and marked: "Deposition of (here insert name of deponent)," and shall promptly transmit it to the attorney for the party who noticed the deposition. This attorney shall store it under conditions that will protect it against loss, destruction, or tampering.

The attorney to whom the transcript of a deposition is transmitted shall retain custody of it until six months after final disposition of the action. At that time, the transcript may be destroyed, unless the court, on motion of any party and for good cause shown, orders that the transcript be preserved for a longer period.

(2) An audiotape or videotape record of deposition testimony, including a certified tape made by an operator qualified under subparagraph (B) of paragraph (2) of subdivision (*l*), shall not be filed with the court. Instead, the operator shall retain custody of that record and shall store it under conditions that will protect it against loss, destruction, or tampering, and preserve as far as practicable the quality of the tape and the integrity of the testimony and images it contains.

At the request of any party to the action, including a party who did not attend the taking of the deposition testimony, or at the request of the deponent, that operator shall promptly (A) permit the one making the request to hear or to view the tape on receipt of payment of a reasonable charge for providing the facilities for hearing or viewing the tape, and (B) furnish a copy of the audiotape or the videotape recording to the one making the request on receipt of payment of the reasonable cost of making that copy of the tape.

The attorney or operator who has custody of an audiotape or videotape record of deposition testimony shall retain custody of it until six months after final disposition of the action. At that time, the audiotape or videotape may be destroyed or erased, unless the court, on motion of any party and for good cause shown, orders that the tape be preserved for a longer period.

(t) Once any party has taken the deposition of any natural person, including that of a party to the action, neither the party who gave, nor any other party who has been served with a deposition notice pursuant to subdivision (c) may take a subsequent deposition of that deponent. However, for good cause shown, the court may grant leave to take a subsequent deposition, and the parties, with the consent of any deponent who is not a party, may stipulate that a subsequent deposition be taken. This subdivision does not preclude taking one subsequent deposition of a natural person who has previously been examined (1) as a result of that person's designation to testify on behalf of an organization under subdivision (d), or (2) for the limited purpose of discovering pursuant to Section 485.230 the identity, location, and value of property in which the deponent has an interest. This subdivision does not authorize the taking of more than one deposition for the limited purpose of Section 485.230.

(u) At the trial or any other hearing in the action, any part or all of a deposition may be used against any party who was present or

represented at the taking of the deposition, or who had due notice of the deposition and did not serve a valid objection under subdivision (g), so far as admissible under the rules of evidence applied as though the deponent were then present and testifying as a witness, in accordance with the following provisions:

(1) Any party may use a deposition for the purpose of contradicting or impeaching the testimony of the deponent as a witness, or for any other purpose permitted by the Evidence Code.

(2) An adverse party may use for any purpose, a deposition of a party to the action, or of anyone who at the time of taking the deposition was an officer, director, managing agent, employee, agent, or designee under subdivision (d) of a party. It is not ground for objection to the use of a deposition of a party under this paragraph by an adverse party that the deponent is available to testify, has testified, or will testify at the trial or other hearing.

(3) Any party may use for any purpose the deposition of any person or organization, including that of any party to the action, if the court finds any of the following:

(A) The deponent resides more than 150 miles from the place of the trial or other hearing.

(B) The deponent, without the procurement or wrongdoing of the proponent of the deposition for the purpose of preventing testimony in open court, is (i) exempted or precluded on the ground of privilege from testifying concerning the matter to which the deponent's testimony is relevant, (ii) disqualified from testifying, (iii) dead or unable to attend or testify because of existing physical or mental illness or infirmity, (iv) absent from the trial or other hearing and the court is unable to compel the deponent's attendance by its process, or (v) absent from the trial or other hearing and the proponent of the deposition has exercised reasonable diligence but has been unable to procure the deponent's attendance by the court's process.

(C) Exceptional circumstances exist that make it desirable to allow the use of any deposition in the interests of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court.

(4) Any party may use a videotape deposition of a treating or consulting physician or of any expert witness even though the deponent is available to testify if the deposition notice under subdivision (d) reserved the right to use the deposition at trial, and if that party has complied with subparagraph (I) of paragraph (2) of subdivision (*l*).

(5) Subject to the requirements of this section, a party may offer in evidence all or any part of a deposition, and if the party introduces only part of the deposition, any other party may introduce any other parts that are relevant to the parts introduced.

(6) Substitution of parties does not affect the right to use depositions previously taken.

(7) When an action has been brought in any court of the United States or of any state, and another action involving the same subject matter is subsequently brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the initial action may be used in the subsequent action as if originally taken in that subsequent action. A deposition previously taken may also be used as permitted by the Evidence Code.

SEC. 22.2. Section 2025 of the Code of Civil Procedure is amended to read:

2025. (a) Any party may obtain discovery within the scope delimited by Section 2017, and subject to the restrictions set forth in Section 2019, by taking in California the oral deposition of any person, including any party to the action. The person deposed may be a natural person, an organization such as a public or private corporation, a partnership, an association, or a governmental agency.

(b) Subject to subdivisions (f) and (t), an oral deposition may be taken as follows:

(1) The defendant may serve a deposition notice without leave of court at any time after that defendant has been served or has appeared in the action, whichever occurs first.

(2) The plaintiff may serve a deposition notice without leave of court on any date that is 20 days after the service of the summons on, or appearance by, any defendant. However, on motion with or without notice, the court, for good cause shown, may grant to a plaintiff leave to serve a deposition notice on an earlier date.

(c) A party desiring to take the oral deposition of any person shall give notice in writing in the manner set forth in subdivision (d). However, where under subdivision (d) of Section 2020 only the production by a nonparty of business records for copying is desired, a copy of the deposition subpoena shall serve as the notice of deposition. The notice of deposition shall be given to every other party who has appeared in the action. The deposition notice, or the accompanying proof of service, shall list all the parties or attorneys for parties on whom it is served.

Where, as defined in subdivision (a) of Section 1985.3, the party giving notice of the deposition is a subpoenaing party, and the deponent is a witness commanded by a deposition subpoena to produce personal records of a consumer, the subpoenaing party shall serve on that consumer (1) a notice of the deposition, (2) the notice of privacy rights specified in subdivision (e) of Section 1985.3 and in Section 1985.6, and (3) a copy of the deposition subpoena.

(d) The deposition notice shall state all of the following:

(1) The address where the deposition will be taken.

(2) The date of the deposition, selected under subdivision (f), and the time it will commence.

(3) The name of each deponent, and the address and telephone number, if known, of any deponent who is not a party to the action.

If the name of the deponent is not known, the deposition notice shall set forth instead a general description sufficient to identify the person or particular class to which the person belongs.

(4) The specification with reasonable particularity of any materials or category of materials to be produced by the deponent.

(5) Any intention to record the testimony by audiotape or videotape, in addition to recording the testimony by the stenographic method as required by paragraph (1) of subdivision (*l*) and any intention to record the testimony by stenographic method, through the instant visual display of the testimony. In the latter event, a copy of the deposition notice shall also be given to the deposition officer. Any offer to provide the instant visual display of the testimony or to provide rough draft transcripts to any party which is accepted prior to, or offered at, the deposition shall also be made by the deposition officer at the deposition to all parties in attendance.

(6) Any intention to reserve the right to use at trial a videotape deposition of a treating or consulting physician or of any expert witness under paragraph (4) of subdivision (u). In this event, the operator of the videotape camera shall be a person who is authorized to administer an oath, and shall not be financially interested in the action or be a relative or employee of any attorney of any of the parties.

If the deponent named is not a natural person, the deposition notice shall describe with reasonable particularity the matters on which examination is requested. In that event, the deponent shall designate and produce at the deposition those of its officers, directors, managing agents, employees, or agents who are most qualified to testify on its behalf as to those matters to the extent of any information known or reasonably available to the deponent. A deposition subpoena shall advise a nonparty deponent of its duty to make this designation, and shall describe with reasonable particularity the matters on which examination is requested.

If the attendance of the deponent is to be compelled by service of a deposition subpoena under Section 2020, an identical copy of that subpoena shall be served with the deposition notice.

(e) (1) The deposition of a natural person, whether or not a party to the action, shall be taken at a place that is, at the option of the party giving notice of the deposition, either within 75 miles of the deponent's residence, or within the county where the action is pending and within 150 miles of the deponent's residence, unless the court orders otherwise under paragraph (3).

(2) The deposition of an organization that is a party to the action shall be taken at a place that is, at the option of the party giving notice of the deposition, either within 75 miles of the organization's principal executive or business office in California, or within the county where the action is pending and within 150 miles of that office. The deposition of any other organization shall be taken within 75 miles of the organization's principal executive or business office in

California, unless the organization consents to a more distant place. If the organization has not designated a principal executive or business office in California, the deposition shall be taken at a place that is, at the option of the party giving notice of the deposition, either within the county where the action is pending, or within 75 miles of any executive or business office in California of the organization.

(3) A party desiring to take the deposition of a natural person who is a party to the action or an officer, director, managing agent, or employee of a party may make a motion for an order that the deponent attend for deposition at a place that is more distant than that permitted under paragraph (1). This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of any issue presented by the motion.

In exercising its discretion to grant or deny this motion, the court shall take into consideration any factor tending to show whether the interests of justice will be served by requiring the deponent's attendance at that more distant place, including, but not limited to, the following:

(A) Whether the moving party selected the forum.

(B) Whether the deponent will be present to testify at the trial of the action.

(C) The convenience of the deponent.

(D) The feasibility of conducting the deposition by written questions under Section 2028, or of using a discovery method other than a deposition.

(E) The number of depositions sought to be taken at a place more distant than that permitted under paragraph (1).

(F) The expense to the parties of requiring the deposition to be taken within the distance permitted under paragraph (1).

(G) The whereabouts of the deponent at the time for which the deposition is scheduled.

The order may be conditioned on the advancement by the moving party of the reasonable expenses and costs to the deponent for travel to the place of deposition.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to increase travel limits for party deponent, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(f) An oral deposition shall be scheduled for a date at least 10 days after service of the deposition notice. If, as defined in subdivision (a) of Section 1985.3, the party giving notice of the deposition is a subpoenaing party, and the deponent is a witness commanded by a deposition subpoena to produce personal records of a consumer, the deposition shall be scheduled for a date at least 20 days after issuance of that subpoena. However, in unlawful detainer actions, an oral

deposition shall be scheduled for a date at least five days after service of the deposition notice, but not later than five days before trial.

On motion or ex parte application of any party or deponent, for good cause shown, the court may shorten or extend the time for scheduling a deposition, or may stay its taking until the determination of a motion for a protective order under subdivision (i).

(g) Any party served with a deposition notice that does not comply with subdivisions (b) to (f), inclusive, waives any error or irregularity unless that party promptly serves a written objection specifying that error or irregularity at least three calendar days prior to the date for which the deposition is scheduled, on the party seeking to take the deposition and any other attorney or party on whom the deposition notice was served. If an objection is made three calendar days before the deposition date, the objecting party shall make personal service of that objection pursuant to Section 1011 on the party who gave notice of the deposition. Any deposition taken after the service of a written objection shall not be used against the objecting party under subdivision (u) if the party did not attend the deposition and if the court determines that the objection was a valid one.

In addition to serving this written objection, a party may also move for an order staying the taking of the deposition and quashing the deposition notice. This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of any issue presented by the motion. The taking of the deposition is stayed pending the determination of this motion.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to quash a deposition notice, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(h) (1) The service of a deposition notice under subdivision (c) is effective to require any deponent who is a party to the action or an officer, director, managing agent, or employee of a party to attend and to testify, as well as to produce any document or tangible thing for inspection and copying.

(2) The attendance and testimony of any other deponent, as well as the production by the deponent of any document or tangible thing for inspection and copying, requires the service on the deponent of a deposition subpoena under Section 2020.

(i) Before, during, or after a deposition, any party, any deponent, or any other affected natural person or organization may promptly move for a protective order. The motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion.

The court, for good cause shown, may make any order that justice requires to protect any party, deponent, or other natural person or

organization from unwarranted annoyance, embarrassment, or oppression, or undue burden and expense. This protective order may include, but is not limited to, one or more of the following directions:

(1) That the deposition not be taken at all.

(2) That the deposition be taken at a different time.

(3) That a videotape deposition of a treating or consulting physician or of any expert witness, intended for possible use at trial under paragraph (4) of subdivision (u), be postponed until the moving party has had an adequate opportunity to prepare, by discovery deposition of the deponent, or other means, for cross-examination.

(4) That the deposition be taken at a place other than that specified in the deposition notice, if it is within a distance permitted by subdivision (e).

(5) That the deposition be taken only on certain specified terms and conditions.

(6) That the deponent's testimony be taken by written, instead of oral, examination.

(7) That the method of discovery be interrogatories to a party instead of an oral deposition.

(8) That the testimony be recorded in a manner different from that specified in the deposition notice.

(9) That certain matters not be inquired into.

(10) That the scope of the examination be limited to certain matters.

(11) That all or certain of the writings or tangible things designated in the deposition notice not be produced, inspected, or copied.

(12) That designated persons, other than the parties to the action and their officers and counsel, be excluded from attending the deposition.

(13) That a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only to specified persons or only in a specified way.

(14) That the parties simultaneously file specified documents enclosed in sealed envelopes to be opened as directed by the court.

(15) That the deposition be sealed and thereafter opened only on order of the court.

If the motion for a protective order is denied in whole or in part, the court may order that the deponent provide or permit the discovery against which protection was sought on those terms and conditions that are just.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion for a protective order, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(j) (1) If the party giving notice of a deposition fails to attend or proceed with it, the court shall impose a monetary sanction under Section 2023 against that party, or the attorney for that party, or both, and in favor of any party attending in person or by attorney, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(2) If a deponent does not appear for a deposition because the party giving notice of the deposition failed to serve a required deposition subpoena, the court shall impose a monetary sanction under Section 2023 against that party, or the attorney for that party, or both, in favor of any other party who, in person or by attorney, attended at the time and place specified in the deposition notice in the expectation that the deponent's testimony would be taken, unless the court finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

If a deponent on whom a deposition subpoena has been served fails to attend a deposition or refuses to be sworn as a witness, the court may impose on the deponent the sanctions described in subdivision (h) of Section 2020.

(3) If, after service of a deposition notice, a party to the action or an officer, director, managing agent, or employee of a party, or a person designated by an organization that is a party under subdivision (d), without having served a valid objection under subdivision (g), fails to appear for examination, or to proceed with it, or to produce for inspection any document or tangible thing described in the deposition notice, the party giving the notice may move for an order compelling the deponent's attendance and testimony, and the production for inspection of any document or tangible thing described in the deposition notice. This motion (A) shall set forth specific facts showing good cause justifying the production for inspection of any document or tangible thing described in the deposition notice, and (B) shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by it or, when the deponent fails to attend the deposition and produce the documents or things described in the deposition notice, by a declaration stating that the petitioner has contacted the deponent to inquire about the nonappearance. If this motion is granted, the court shall also impose a monetary sanction under Section 2023 against the deponent or the party with whom the deponent is affiliated, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust. On motion of any other party who, in person or by attorney, attended at the time and place specified in the deposition notice in the expectation that the deponent's testimony would be taken, the court shall also impose a monetary sanction under Section

2023, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

If that party or party-affiliated deponent then fails to obey an order compelling attendance, testimony, and production, the court may make those orders that are just, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Section 2023 against that party deponent or against the party with whom the deponent is affiliated. In lieu of or in addition to this sanction, the court may impose a monetary sanction under Section 2023 against that deponent or against the party with whom that party deponent is affiliated, and in favor of any party who, in person or by attorney, attended in the expectation that the deponent's testimony would be taken pursuant to that order.

(k) Except as provided in paragraph (3) of subdivision (d) of Section 2020, the deposition shall be conducted under the supervision of an officer who is authorized to administer an oath. This officer shall not be financially interested in the action and shall not be a relative or employee of any attorney of any of the parties, or of any of the parties. Any objection to the qualifications of the deposition officer is waived unless made before the deposition begins or as soon thereafter as the ground for that objection becomes known or could be discovered by reasonable diligence.

(*l*) (1) The deposition officer shall put the deponent under oath. Unless the parties agree or the court orders otherwise, the testimony, as well as any stated objections, shall be taken stenographically. The party noticing the deposition may also record the testimony by audiotape or videotape if the notice of deposition stated an intention also to record the testimony by either of those methods, or if all the parties agree that the testimony may also be recorded by either of those methods. Any other party, at that party's expense, may make a simultaneous audiotape or videotape record of the deposition, provided that other party promptly, and in no event less than three calendar days before the date for which the deposition is scheduled, serves a written notice of this intention to audiotape or videotape the deposition testimony on the party or attorney who noticed the deposition, on all other parties or attorneys on whom the deposition notice was served under subdivision (c), and on any deponent whose attendance is being compelled by a deposition subpoena under Section 2020. If this notice is given three calendar days before the deposition date, it shall be made by personal service under Section 1011. Examination and cross-examination of the deponent shall proceed as permitted at trial under the provisions of the Evidence Code.

(2) If the deposition is being recorded by means of audiotape or videotape, the following procedure shall be observed:

(A) The area used for recording the deponent's oral testimony shall be suitably large, adequately lighted, and reasonably quiet.

(B) The operator of the recording equipment shall be competent to set up, operate, and monitor the equipment in the manner prescribed in this subdivision. The operator may be an employee of the attorney taking the deposition unless the operator is also the deposition officer. However, if a videotape of deposition testimony is to be used under paragraph (4) of subdivision (u), the operator of the recording equipment shall be a person who is authorized to administer an oath, and shall not be financially interested in the action or be a relative or employee of any attorney of any of the parties, unless all parties attending the deposition agree on the record to waive these qualifications and restrictions.

(C) The operator shall not distort the appearance or the demeanor of participants in the deposition by the use of camera or sound recording techniques.

(D) The deposition shall begin with an oral or written statement on camera or on the audiotape that includes the operator's name and business address, the name and business address of the operator's employer, the date, time, and place of the deposition, the caption of the case, the name of the deponent, a specification of the party on whose behalf the deposition is being taken, and any stipulations by the parties.

(E) Counsel for the parties shall identify themselves on camera or on the audiotape.

(F) The oath shall be administered to the deponent on camera or on the audiotape.

(G) If the length of a deposition requires the use of more than one unit of tape, the end of each unit and the beginning of each succeeding unit shall be announced on camera or on the audiotape.

(H) At the conclusion of a deposition, a statement shall be made on camera or on the audiotape that the deposition is ended and shall set forth any stipulations made by counsel concerning the custody of the audiotape or videotape recording and the exhibits, or concerning other pertinent matters.

(I) A party intending to offer an audiotaped or videotaped recording of a deposition in evidence under subdivision (u) shall notify the court and all parties in writing of that intent and of the parts of the deposition to be offered within sufficient time for objections to be made and ruled on by the judge to whom the case is assigned for trial or hearing, and for any editing of the tape. Objections to all or part of the deposition shall be made in writing. The court may permit further designations of testimony and objections as justice may require. With respect to those portions of an audiotaped or videotaped deposition that are not designated by any party or that are ruled to be objectionable, the court may order that the party offering the recording of the deposition at the trial or hearing suppress those portions, or that an edited version of the deposition tape be prepared for use at the trial or hearing. The original audiotape or videotape of the deposition shall be preserved

unaltered. If no stenographic record of the deposition testimony has previously been made, the party offering a videotape or an audiotape recording of that testimony under subdivision (u) shall accompany that offer with a stenographic transcript prepared from that recording.

(3) In lieu of participating in the oral examination, parties may transmit written questions in a sealed envelope to the party taking the deposition for delivery to the deposition officer, who shall unseal the envelope and propound them to the deponent after the oral examination has been completed.

(m) (1) The protection of information from discovery on the ground that it is privileged or that it is protected work product under Section 2018 is waived unless a specific objection to its disclosure is timely made during the deposition.

(2) Errors and irregularities of any kind occurring at the oral examination that might be cured if promptly presented are waived unless a specific objection to them is timely made during the deposition. These errors and irregularities include, but are not limited to, those relating to the manner of taking the deposition, to the oath or affirmation administered, to the conduct of a party, attorney, deponent, or deposition officer, or to the form of any question or answer. Unless the objecting party demands that the taking of the deposition be suspended to permit a motion for a protective order under subdivision (n), the deposition shall proceed subject to the objection.

(3) Objections to the competency of the deponent, or to the relevancy, materiality, or admissibility at trial of the testimony or of the materials produced are unnecessary and are not waived by failure to make them before or during the deposition.

(4) If a deponent fails to answer any question or to produce any document or tangible thing under the deponent's control that is specified in the deposition notice or a deposition subpoena, the party seeking that answer or production may adjourn the deposition or complete the examination on other matters without waiving the right at a later time to move for an order compelling that answer or production under subdivision (o).

(n) On demand of any party or the deponent, the deposition officer shall suspend the taking of testimony to enable that party or deponent to move for a protective order on the ground that the examination is being conducted in bad faith or in a manner that unreasonably annoys, embarrasses, or oppresses that deponent or party. This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion. The court, for good cause shown, may terminate the examination or may limit the scope and manner of taking the deposition as provided in subdivision (i). If the order terminates the examination, the deposition shall not thereafter be resumed, except on order of the court.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion for this protective order, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(o) If a deponent fails to answer any question or to produce any document or tangible thing under the deponent's control that is specified in the deposition notice or a deposition subpoena, the party seeking discovery may move the court for an order compelling that answer or production. This motion shall be made no later than 60 days after the completion of the record of the deposition, and shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion. Notice of this motion shall be given to all parties, and to the deponent either orally at the examination, or by subsequent service in writing. If the notice of the motion is given orally, the deposition officer shall direct the deponent to attend a session of the court at the time specified in the notice. Not less than five days prior to the hearing on this motion, the moving party shall lodge with the court a certified copy of any parts of the stenographic transcript of the deposition that are relevant to the motion. If a deposition is recorded by audiotape or videotape, the moving party is required to lodge a certified copy of a transcript of any parts of the deposition that are relevant to the motion. If the court determines that the answer or production sought is subject to discovery, it shall order that the answer be given or the production be made on the resumption of the deposition.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel answer or production, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

If a deponent fails to obey an order entered under this subdivision, the failure may be considered a contempt of court. In addition, if the disobedient deponent is a party to the action or an officer, director, managing agent, or employee of a party, the court may make those orders that are just against the disobedient party, or against the party with whom the disobedient deponent is affiliated, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Section 2023. In lieu of or in addition to this sanction, the court may impose a monetary sanction under Section 2023 against that party deponent or against any party with whom the deponent is affiliated.

(p) Unless the parties agree otherwise, the testimony at any deposition recorded by stenographic means shall be transcribed. The party noticing the deposition shall bear the cost of that transcription, unless the court, on motion and for good cause shown, orders that the cost be borne or shared by another party. Any other party, at that

party's expense, may obtain a copy of the transcript. If the deposition officer receives a request from a party for an original or a copy of the deposition transcript, or any portion thereof, and the document will be available to that party prior to the time the original or copy would be available to any other party, the deposition officer shall immediately notify all other parties attending the deposition of the request, and shall, upon request by any party other than the party making the original request, make that copy of the full or partial deposition transcript available to all parties at the same time. Stenographic notes of depositions shall be retained by the reporter for a period of not less than eight years from the date of the deposition, where no transcript is produced, and not less than one year from the date on which the transcript is produced. Those notes may be either on paper or electronic media, as long as it allows for satisfactory production of a transcript at any time during the periods specified. At the request of any other party to the action, including a party who did not attend the taking of the deposition testimony, any party who records or causes the recording of that testimony by means of audiotape or videotape shall promptly (1) permit that other party to hear the audiotape or to view the videotape, and (2) furnish a copy of the audiotape or videotape to that other party on receipt of payment of the reasonable cost of making that copy of the tape.

If the testimony at the deposition is recorded both stenographically, and by audiotape or videotape, the stenographic transcript is the official record of that testimony for the purpose of the trial and any subsequent hearing or appeal.

(q) (1) If the deposition testimony is stenographically recorded, the deposition officer shall send written notice to the deponent and to all parties attending the deposition when the original transcript of the testimony for each session of the deposition is available for reading, correcting, and signing, unless the deponent and the attending parties agree on the record that the reading, correcting, and signing of the transcript of the testimony will be waived or that the reading, correcting, and signing of a transcript of the testimony will take place after the entire deposition has been concluded or at some other specific time. For 30 days following each such notice, unless the attending parties and the deponent agree on the record or otherwise in writing to a longer or shorter time period, the deponent may change the form or the substance of the answer to a question, and may either approve the transcript of the deposition by signing it, or refuse to approve the transcript by not signing it.

Alternatively, within this same period, the deponent may change the form or the substance of the answer to any question and may approve or refuse to approve the transcript by means of a letter to the deposition officer signed by the deponent which is mailed by certified or registered mail with return receipt requested. A copy of that letter shall be sent by first-class mail to all parties attending the deposition. For good cause shown, the court may shorten the 30-day

period for making changes, approving, or refusing to approve the transcript.

The deposition officer shall indicate on the original of the transcript, if the deponent has not already done so at the office of the deposition officer, any action taken by the deponent and indicate on the original of the transcript, the deponent's approval of, or failure or refusal to approve, the transcript. The deposition officer shall also notify in writing the parties attending the deposition of any changes which the deponent timely made in person. If the deponent fails or refuses to approve the transcript within the allotted period, the deposition shall be given the same effect as though it had been approved, subject to any changes timely made by the deponent. However, on a seasonable motion to suppress the deposition, accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion, the court may determine that the reasons given for the failure or refusal to approve the transcript require rejection of the deposition in whole or in part.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to suppress a deposition, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(2) If there is no stenographic transcription of the deposition, the deposition officer shall send written notice to the deponent and to all parties attending the deposition that the recording is available for review, unless the deponent and all these parties agree on the record to waive the hearing or viewing of an audiotape or videotape recording of the testimony. For 30 days following this notice the deponent, either in person or by signed letter to the deposition officer, may change the substance of the answer to any question.

The deposition officer shall set forth in a writing to accompany the recording any changes made by the deponent, as well as either the deponent's signature identifying the deposition as his or her own, or a statement of the deponent's failure to supply the signature, or to contact the officer within the allotted period. When a deponent fails to contact the officer within the allotted period, or expressly refuses by a signature to identify the deposition as his or her own, the deposition shall be given the same effect as though signed. However, on a seasonable motion to suppress the deposition, accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion, the court may determine that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to suppress a deposition, unless it finds that the one

subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(r) (1) The deposition officer shall certify on the transcript of the deposition, or in a writing accompanying an audiotaped or videotaped deposition as described in paragraph (2) of subdivision (q), that the deponent was duly sworn and that the transcript or recording is a true record of the testimony given and of any changes made by the deponent.

(2) When prepared as a rough draft transcript, the transcript of the deposition may not be certified and may not be used, cited, or transcribed as the certified transcript of the deposition proceedings. The rough draft transcript may not be cited or used in any way or at any time to rebut or contradict the certified transcript of deposition proceedings as provided by the deposition officer.

(s) (1) The certified transcript of a deposition shall not be filed with the court. Instead, the deposition officer shall securely seal that transcript in an envelope or package endorsed with the title of the action and marked: "Deposition of (here insert name of deponent)," and shall promptly transmit it to the attorney for the party who noticed the deposition. This attorney shall store it under conditions that will protect it against loss, destruction, or tampering.

The attorney to whom the transcript of a deposition is transmitted shall retain custody of it until six months after final disposition of the action. At that time, the transcript may be destroyed, unless the court, on motion of any party and for good cause shown, orders that the transcript be preserved for a longer period.

(2) An audiotape or videotape record of deposition testimony, including a certified tape made by an operator qualified under subparagraph (B) of paragraph (2) of subdivision (*l*), shall not be filed with the court. Instead, the operator shall retain custody of that record and shall store it under conditions that will protect it against loss, destruction, or tampering, and preserve as far as practicable the quality of the tape and the integrity of the testimony and images it contains.

At the request of any party to the action, including a party who did not attend the taking of the deposition testimony, or at the request of the deponent, that operator shall promptly (A) permit the one making the request to hear or to view the tape on receipt of payment of a reasonable charge for providing the facilities for hearing or viewing the tape, and (B) furnish a copy of the audiotape or the videotape recording to the one making the request on receipt of payment of the reasonable cost of making that copy of the tape.

The attorney or operator who has custody of an audiotape or videotape record of deposition testimony shall retain custody of it until six months after final disposition of the action. At that time, the audiotape or videotape may be destroyed or erased, unless the court, on motion of any party and for good cause shown, orders that the tape be preserved for a longer period.

(t) Once any party has taken the deposition of any natural person, including that of a party to the action, neither the party who gave, nor any other party who has been served with a deposition notice pursuant to subdivision (c) may take a subsequent deposition of that deponent. However, for good cause shown, the court may grant leave to take a subsequent deposition, and the parties, with the consent of any deponent who is not a party, may stipulate that a subsequent deposition be taken. This subdivision does not preclude taking one subsequent deposition of a natural person who has previously been examined (1) as a result of that person's designation to testify on behalf of an organization under subdivision (d), or (2) for the limited purpose of discovering pursuant to Section 485.230 the identity, location, and value of property in which the deponent has an interest. This subdivision does not authorize the taking of more than one deposition for the limited purpose of Section 485.230.

(u) At the trial or any other hearing in the action, any part or all of a deposition may be used against any party who was present or represented at the taking of the deposition, or who had due notice of the deposition and did not serve a valid objection under subdivision (g), so far as admissible under the rules of evidence applied as though the deponent were then present and testifying as a witness, in accordance with the following provisions:

(1) Any party may use a deposition for the purpose of contradicting or impeaching the testimony of the deponent as a witness, or for any other purpose permitted by the Evidence Code.

(2) An adverse party may use for any purpose, a deposition of a party to the action, or of anyone who at the time of taking the deposition was an officer, director, managing agent, employee, agent, or designee under subdivision (d) of a party. It is not ground for objection to the use of a deposition of a party under this paragraph by an adverse party that the deponent is available to testify, has testified, or will testify at the trial or other hearing.

(3) Any party may use for any purpose the deposition of any person or organization, including that of any party to the action, if the court finds any of the following:

(A) The deponent resides more than 150 miles from the place of the trial or other hearing.

(B) The deponent, without the procurement or wrongdoing of the proponent of the deposition for the purpose of preventing testimony in open court, is (i) exempted or precluded on the ground of privilege from testifying concerning the matter to which the deponent's testimony is relevant, (ii) disqualified from testifying, (iii) dead or unable to attend or testify because of existing physical or mental illness or infirmity, (iv) absent from the trial or other hearing and the court is unable to compel the deponent's attendance by its process, or (v) absent from the trial or other hearing and the proponent of the deposition has exercised reasonable diligence but

has been unable to procure the deponent's attendance by the court's process.

(C) Exceptional circumstances exist that make it desirable to allow the use of any deposition in the interests of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court.

(4) Any party may use a videotape deposition of a treating or consulting physician or of any expert witness even though the deponent is available to testify if the deposition notice under subdivision (d) reserved the right to use the deposition at trial, and if that party has complied with subparagraph (I) of paragraph (2) of subdivision (*l*).

(5) Subject to the requirements of this section, a party may offer in evidence all or any part of a deposition, and if the party introduces only part of the deposition, any other party may introduce any other parts that are relevant to the parts introduced.

(6) Substitution of parties does not affect the right to use depositions previously taken.

(7) When an action has been brought in any court of the United States or of any state, and another action involving the same subject matter is subsequently brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the initial action may be used in the subsequent action as if originally taken in that subsequent action. A deposition previously taken may also be used as permitted by the Evidence Code.

SEC. 22.3. Section 2025 of the Code of Civil Procedure is amended to read:

2025. (a) Any party may obtain discovery within the scope delimited by Section 2017, and subject to the restrictions set forth in Section 2019, by taking in California the oral deposition of any person, including any party to the action. The person deposed may be a natural person, an organization such as a public or private corporation, a partnership, an association, or a governmental agency.

(b) Subject to subdivisions (f) and (t), an oral deposition may be taken as follows:

(1) The defendant may serve a deposition notice without leave of court at any time after that defendant has been served or has appeared in the action, whichever occurs first.

(2) The plaintiff may serve a deposition notice without leave of court on any date that is 20 days after the service of the summons on, or appearance by, any defendant. However, on motion with or without notice, the court, for good cause shown, may grant to a plaintiff leave to serve a deposition notice on an earlier date.

(c) A party desiring to take the oral deposition of any person shall give notice in writing in the manner set forth in subdivision (d). However, where under subdivision (d) of Section 2020 only the production by a nonparty of business records for copying is desired,

a copy of the deposition subpoena shall serve as the notice of deposition. The notice of deposition shall be given to every other party who has appeared in the action. The deposition notice, or the accompanying proof of service, shall list all the parties or attorneys for parties on whom it is served.

Where, as defined in subdivision (a) of Section 1985.3, the party giving notice of the deposition is a subpoenaing party, and the deponent is a witness commanded by a deposition subpoena to produce personal records of a consumer, the subpoenaing party shall serve on that consumer (1) a notice of the deposition, (2) the notice of privacy rights specified in subdivision (e) of Section 1985.3 and in Section 1985.6, and (3) a copy of the deposition subpoena.

(d) The deposition notice shall state all of the following:

(1) The address where the deposition will be taken.

(2) The date of the deposition, selected under subdivision (f), and the time it will commence.

(3) The name of each deponent, and the address and telephone number, if known, of any deponent who is not a party to the action. If the name of the deponent is not known, the deposition notice shall set forth instead a general description sufficient to identify the person or particular class to which the person belongs.

(4) The specification with reasonable particularity of any materials or category of materials to be produced by the deponent.

(5) Any intention to record the testimony by audiotape or videotape, in addition to recording the testimony by the stenographic method as required by paragraph (1) of subdivision (*l*), and any intention to record the testimony by stenographic method, through the instant visual display of the testimony. In the latter event, a copy of the deposition notice shall also be given to the deposition officer. Any offer to provide the instant visual display of the testimony or to provide rough draft transcripts to any party which is accepted prior to or offered at the deposition shall also be made by the deposition officer at the deposition to all parties in attendance.

(6) Any intention to reserve the right to use at trial a videotape deposition of a treating or consulting physician or of any expert witness under paragraph (4) of subdivision (u). In this event, the operator of the videotape camera shall be a person who is authorized to administer an oath, and shall not be financially interested in the action or be a relative or employee of any attorney of any of the parties.

If the deponent named is not a natural person, the deposition notice shall describe with reasonable particularity the matters on which examination is requested. In that event, the deponent shall designate and produce at the deposition those of its officers, directors, managing agents, employees, or agents who are most qualified to testify on its behalf as to those matters to the extent of any information known or reasonably available to the deponent. A deposition subpoena shall advise a nonparty deponent of its duty to

make this designation, and shall describe with reasonable particularity the matters on which examination is requested.

If the attendance of the deponent is to be compelled by service of a deposition subpoena under Section 2020, an identical copy of that subpoena shall be served with the deposition notice.

(e) (1) The deposition of a natural person, whether or not a party to the action, shall be taken at a place that is, at the option of the party giving notice of the deposition, either within 75 miles of the deponent's residence, or within the county where the action is pending and within 150 miles of the deponent's residence, unless the court orders otherwise under paragraph (3).

(2) The deposition of an organization that is a party to the action shall be taken at a place that is, at the option of the party giving notice of the deposition, either within 75 miles of the organization's principal executive or business office in California, or within the county where the action is pending and within 150 miles of that office. The deposition of any other organization shall be taken within 75 miles of the organization's principal executive or business office in California, unless the organization consents to a more distant place. If the organization has not designated a principal executive or business office in California, the deposition shall be taken at a place that is, at the option of the party giving notice of the deposition, either within the county where the action is pending, or within 75 miles of any executive or business office in California of the organization.

(3) A party desiring to take the deposition of a natural person who is a party to the action or an officer, director, managing agent, or employee of a party may make a motion for an order that the deponent attend for deposition at a place that is more distant than that permitted under paragraph (1). This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of any issue presented by the motion.

In exercising its discretion to grant or deny this motion, the court shall take into consideration any factor tending to show whether the interests of justice will be served by requiring the deponent's attendance at that more distant place, including, but not limited to, the following:

(A) Whether the moving party selected the forum.

(B) Whether the deponent will be present to testify at the trial of the action.

(C) The convenience of the deponent.

(D) The feasibility of conducting the deposition by written questions under Section 2028, or of using a discovery method other than a deposition.

(E) The number of depositions sought to be taken at a place more distant than that permitted under paragraph (1).

(F) The expense to the parties of requiring the deposition to be taken within the distance permitted under paragraph (1).

(G) The whereabouts of the deponent at the time for which the deposition is scheduled.

The order may be conditioned on the advancement by the moving party of the reasonable expenses and costs to the deponent for travel to the place of deposition.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to increase travel limits for party deponent, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(f) An oral deposition shall be scheduled for a date at least 10 days after service of the deposition notice. If, as defined in subdivision (a) of Section 1985.3, the party giving notice of the deposition is a subpoenaing party, and the deponent is a witness commanded by a deposition subpoena to produce personal records of a consumer, the deposition shall be scheduled for a date at least 20 days after issuance of that subpoena. However, in unlawful detainer actions, an oral deposition shall be scheduled for a date at least five days after service of the deposition notice, but not later than five days before trial.

On motion or ex parte application of any party or deponent, for good cause shown, the court may shorten or extend the time for scheduling a deposition, or may stay its taking until the determination of a motion for a protective order under subdivision (i).

(g) Any party served with a deposition notice that does not comply with subdivisions (b) to (f), inclusive, waives any error or irregularity unless that party promptly serves a written objection specifying that error or irregularity at least three calendar days prior to the date for which the deposition is scheduled, on the party seeking to take the deposition and any other attorney or party on whom the deposition notice was served. If an objection is made three calendar days before the deposition date, the objecting party shall make personal service of that objection pursuant to Section 1011 on the party who gave notice of the deposition. Any deposition taken after the service of a written objection shall not be used against the objecting party under subdivision (u) if the party did not attend the deposition and if the court determines that the objection was a valid one.

In addition to serving this written objection, a party may also move for an order staying the taking of the deposition and quashing the deposition notice. This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of any issue presented by the motion. The taking of the deposition is stayed pending the determination of this motion.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to quash a deposition notice, unless it finds that the

one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(h) (1) The service of a deposition notice under subdivision (c) is effective to require any deponent who is a party to the action or an officer, director, managing agent, or employee of a party to attend and to testify, as well as to produce any document or tangible thing for inspection and copying.

(2) The attendance and testimony of any other deponent, as well as the production by the deponent of any document or tangible thing for inspection and copying, requires the service on the deponent of a deposition subpoena under Section 2020.

(i) Before, during, or after a deposition, any party, any deponent, or any other affected natural person or organization may promptly move for a protective order. The motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion.

The court, for good cause shown, may make any order that justice requires to protect any party, deponent, or other natural person or organization from unwarranted annoyance, embarrassment, or oppression, or undue burden and expense. This protective order may include, but is not limited to, one or more of the following directions:

(1) That the deposition not be taken at all.

(2) That the deposition be taken at a different time.

(3) That a videotape deposition of a treating or consulting physician or of any expert witness, intended for possible use at trial under paragraph (4) of subdivision (u), be postponed until the moving party has had an adequate opportunity to prepare, by discovery deposition of the deponent, or other means, for cross-examination.

(4) That the deposition be taken at a place other than that specified in the deposition notice, if it is within a distance permitted by subdivision (e).

(5) That the deposition be taken only on certain specified terms and conditions.

(6) That the deponent's testimony be taken by written, instead of oral, examination.

(7) That the method of discovery be interrogatories to a party instead of an oral deposition.

(8) That the testimony be recorded in a manner different from that specified in the deposition notice.

(9) That certain matters not be inquired into.

(10) That the scope of the examination be limited to certain matters.

(11) That all or certain of the writings or tangible things designated in the deposition notice not be produced, inspected, or copied.

(12) That designated persons, other than the parties to the action and their officers and counsel, be excluded from attending the deposition.

(13) That a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only to specified persons or only in a specified way.

(14) That the parties simultaneously file specified documents enclosed in sealed envelopes to be opened as directed by the court.

(15) That the deposition be sealed and thereafter opened only on order of the court.

If the motion for a protective order is denied in whole or in part, the court may order that the deponent provide or permit the discovery against which protection was sought on those terms and conditions that are just.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion for a protective order, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(j) (1) If the party giving notice of a deposition fails to attend or proceed with it, the court shall impose a monetary sanction under Section 2023 against that party, or the attorney for that party, or both, and in favor of any party attending in person or by attorney, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(2) If a deponent does not appear for a deposition because the party giving notice of the deposition failed to serve a required deposition subpoena, the court shall impose a monetary sanction under Section 2023 against that party, or the attorney for that party, or both, in favor of any other party who, in person or by attorney, attended at the time and place specified in the deposition notice in the expectation that the deponent's testimony would be taken, unless the court finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

If a deponent on whom a deposition subpoena has been served fails to attend a deposition or refuses to be sworn as a witness, the court may impose on the deponent the sanctions described in subdivision (h) of Section 2020.

(3) If, after service of a deposition notice, a party to the action or an officer, director, managing agent, or employee of a party, or a person designated by an organization that is a party under subdivision (d), without having served a valid objection under subdivision (g), fails to appear for examination, or to proceed with it, or to produce for inspection any document or tangible thing described in the deposition notice, the party giving the notice may move for an order compelling the deponent's attendance and

testimony, and the production for inspection of any document or tangible thing described in the deposition notice. This motion (A) shall set forth specific facts showing good cause justifying the production for inspection of any document or tangible thing described in the deposition notice, and (B) shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by it or, when the deponent fails to attend the deposition and produce the documents or things described in the deposition notice, by a declaration stating that the petitioner has contacted the deponent to inquire about the nonappearance. If this motion is granted, the court shall also impose a monetary sanction under Section 2023 against the deponent or the party with whom the deponent is affiliated, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust. On motion of any other party who, in person or by attorney, attended at the time and place specified in the deposition notice in the expectation that the deponent's testimony would be taken, the court shall also impose a monetary sanction under Section 2023, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

If that party or party-affiliated deponent then fails to obey an order compelling attendance, testimony, and production, the court may make those orders that are just, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Section 2023 against that party deponent or against the party with whom the deponent is affiliated. In lieu of or in addition to this sanction, the court may impose a monetary sanction under Section 2023 against that deponent or against the party with whom that party deponent is affiliated, and in favor of any party who, in person or by attorney, attended in the expectation that the deponent's testimony would be taken pursuant to that order.

(k) Except as provided in paragraph (3) of subdivision (d) of Section 2020, the deposition shall be conducted under the supervision of an officer who is authorized to administer an oath. This officer shall not be financially interested in the action and shall not be a relative or employee of any attorney of any of the parties, or of any of the parties. Any objection to the qualifications of the deposition officer is waived unless made before the deposition begins or as soon thereafter as the ground for that objection becomes known or could be discovered by reasonable diligence.

(*l*) (1) The deposition officer shall put the deponent under oath. Unless the parties agree or the court orders otherwise, the testimony, as well as any stated objections, shall be taken stenographically. The party noticing the deposition may also record the testimony by audiotape or videotape if the notice of deposition stated an intention also to record the testimony by either of those methods, or if all the

parties agree that the testimony may also be recorded by either of those methods. Any other party, at that party's expense, may make a simultaneous audiotape or videotape record of the deposition, provided that other party promptly, and in no event less than three calendar days before the date for which the deposition is scheduled, serves a written notice of this intention to audiotape or videotape the deposition testimony on the party or attorney who noticed the deposition, on all other parties or attorneys on whom the deposition notice was served under subdivision (c), and on any deponent whose attendance is being compelled by a deposition subpoena under Section 2020. If this notice is given three calendar days before the deposition date, it shall be made by personal service under Section 1011. Examination and cross-examination of the deponent shall proceed as permitted at trial under the provisions of the Evidence Code.

(2) If the deposition is being recorded by means of audiotape or videotape, the following procedure shall be observed:

(A) The area used for recording the deponent's oral testimony shall be suitably large, adequately lighted, and reasonably quiet.

(B) The operator of the recording equipment shall be competent to set up, operate, and monitor the equipment in the manner prescribed in this subdivision. The operator may be an employee of the attorney taking the deposition unless the operator is also the deposition officer. However, if a videotape of deposition testimony is to be used under paragraph (4) of subdivision (u), the operator of the recording equipment shall be a person who is authorized to administer an oath, and shall not be financially interested in the action or be a relative or employee of any attorney of any of the parties, unless all parties attending the deposition agree on the record to waive these qualifications and restrictions.

(C) The operator shall not distort the appearance or the demeanor of participants in the deposition by the use of camera or sound recording techniques.

(D) The deposition shall begin with an oral or written statement on camera or on the audiotape that includes the operator's name and business address, the name and business address of the operator's employer, the date, time, and place of the deposition, the caption of the case, the name of the deponent, a specification of the party on whose behalf the deposition is being taken, and any stipulations by the parties.

(E) Counsel for the parties shall identify themselves on camera or on the audiotape.

(F) The oath shall be administered to the deponent on camera or on the audiotape.

(G) If the length of a deposition requires the use of more than one unit of tape, the end of each unit and the beginning of each succeeding unit shall be announced on camera or on the audiotape.

(H) At the conclusion of a deposition, a statement shall be made on camera or on the audiotape that the deposition is ended and shall set forth any stipulations made by counsel concerning the custody of the audiotape or videotape recording and the exhibits, or concerning other pertinent matters.

(I) A party intending to offer an audiotaped or videotaped recording of a deposition in evidence under subdivision (u) shall notify the court and all parties in writing of that intent and of the parts of the deposition to be offered within sufficient time for objections to be made and ruled on by the judge to whom the case is assigned for trial or hearing, and for any editing of the tape. Objections to all or part of the deposition shall be made in writing. The court may permit further designations of testimony and objections as justice may require. With respect to those portions of an audiotaped or videotaped deposition that are not designated by any party or that are ruled to be objectionable, the court may order that the party offering the recording of the deposition at the trial or hearing suppress those portions, or that an edited version of the deposition tape be prepared for use at the trial or hearing. The original audiotape or videotape of the deposition shall be preserved unaltered. If no stenographic record of the deposition testimony has previously been made, the party offering a videotape or an audiotape recording of that testimony under subdivision (u) shall accompany that offer with a stenographic transcript prepared from that recording.

(3) In lieu of participating in the oral examination, parties may transmit written questions in a sealed envelope to the party taking the deposition for delivery to the deposition officer, who shall unseal the envelope and propound them to the deponent after the oral examination has been completed.

(m) (1) The protection of information from discovery on the ground that it is privileged or that it is protected work product under Section 2018 is waived unless a specific objection to its disclosure is timely made during the deposition.

(2) Errors and irregularities of any kind occurring at the oral examination that might be cured if promptly presented are waived unless a specific objection to them is timely made during the deposition. These errors and irregularities include, but are not limited to, those relating to the manner of taking the deposition, to the oath or affirmation administered, to the conduct of a party, attorney, deponent, or deposition officer, or to the form of any question or answer. Unless the objecting party demands that the taking of the deposition be suspended to permit a motion for a protective order under subdivision (n), the deposition shall proceed subject to the objection.

(3) Objections to the competency of the deponent, or to the relevancy, materiality, or admissibility at trial of the testimony or of

the materials produced are unnecessary and are not waived by failure to make them before or during the deposition.

(4) If a deponent fails to answer any question or to produce any document or tangible thing under the deponent's control that is specified in the deposition notice or a deposition subpoena, the party seeking that answer or production may adjourn the deposition or complete the examination on other matters without waiving the right at a later time to move for an order compelling that answer or production under subdivision (o).

(n) The deposition officer shall not suspend the taking of testimony without stipulation of the party conducting the deposition and the deponent unless any party attending the deposition or the deponent demands the taking of testimony be suspended to enable that party or deponent to move for a protective order on the ground that the examination is being conducted in bad faith or in a manner that unreasonably annoys, embarrasses, or oppresses that deponent or party. This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion. The court, for good cause shown, may terminate the examination or may limit the scope and manner of taking the deposition as provided in subdivision (i). If the order terminates the examination, the deposition shall not thereafter be resumed, except on order of the court.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion for this protective order, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(o) If a deponent fails to answer any question or to produce any document or tangible thing under the deponent's control that is specified in the deposition notice or a deposition subpoena, the party seeking discovery may move the court for an order compelling that answer or production. This motion shall be made no later than 60 days after the completion of the record of the deposition, and shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion. Notice of this motion shall be given to all parties, and to the deponent either orally at the examination, or by subsequent service in writing. If the notice of the motion is given orally, the deposition officer shall direct the deponent to attend a session of the court at the time specified in the notice. Not less than five days prior to the hearing on this motion, the moving party shall lodge with the court a certified copy of any parts of the stenographic transcript of the deposition that are relevant to the motion. If a deposition is recorded by audiotape or videotape, the moving party is required to lodge a certified copy of a transcript of any parts of the deposition that are relevant to the motion. If the court determines that the answer or production sought is subject to discovery, it shall order that the

answer be given or the production be made on the resumption of the deposition.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel answer or production, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

If a deponent fails to obey an order entered under this subdivision, the failure may be considered a contempt of court. In addition, if the disobedient deponent is a party to the action or an officer, director, managing agent, or employee of a party, the court may make those orders that are just against the disobedient party, or against the party with whom the disobedient deponent is affiliated, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Section 2023. In lieu of or in addition to this sanction, the court may impose a monetary sanction under Section 2023 against that party deponent or against any party with whom the deponent is affiliated.

(p) Unless the parties agree otherwise, the testimony at any deposition recorded by stenographic means shall be transcribed. The party noticing the deposition shall bear the cost of that transcription, unless the court, on motion and for good cause shown, orders that the cost be borne or shared by another party. Any other party, at that party's expense, may obtain a copy of the transcript. If the deposition officer receives a request from a party for an original or a copy of the deposition transcript, or any portion thereof, and the document will be available to that party prior to the time the original or copy would be available to any other party, the deposition officer shall immediately notify all other parties attending the deposition of the request, and shall, upon request by any party other than the party making the original request, make that copy of the full or partial deposition transcript available to all parties at the same time. Stenographic notes of depositions shall be retained by the reporter for a period of not less than eight years from the date of the deposition, where no transcript is produced, and not less than one year from the date on which the transcript is produced. Those notes may be either on paper or electronic media, as long as it allows for satisfactory production of a transcript at any time during the periods specified. At the request of any other party to the action, including a party who did not attend the taking of the deposition testimony, any party who records or causes the recording of that testimony by means of audiotape or videotape shall promptly (1) permit that other party to hear the audiotape or to view the videotape, and (2) furnish a copy of the audiotape or videotape to that other party on receipt of payment of the reasonable cost of making that copy of the tape.

If the testimony at the deposition is recorded both stenographically, and by audiotape or videotape, the stenographic

transcript is the official record of that testimony for the purpose of the trial and any subsequent hearing or appeal.

(q) (1) If the deposition testimony is stenographically recorded, the deposition officer shall send written notice to the deponent and to all parties attending the deposition when the original transcript of the testimony for each session of the deposition is available for reading, correcting, and signing, unless the deponent and the attending parties agree on the record that the reading, correcting, and signing of the transcript of the testimony will be waived or that the reading, correcting, and signing of a transcript of the testimony will take place after the entire deposition has been concluded or at some other specific time. For 30 days following each such notice, unless the attending parties and the deponent agree on the record or otherwise in writing to a longer or shorter time period, the deponent may change the form or the substance of the answer to a question, and may either approve the transcript of the deposition by signing it, or refuse to approve the transcript by not signing it.

Alternatively, within this same period, the deponent may change the form or the substance of the answer to any question and may approve or refuse to approve the transcript by means of a letter to the deposition officer signed by the deponent which is mailed by certified or registered mail with return receipt requested. A copy of that letter shall be sent by first-class mail to all parties attending the deposition. For good cause shown, the court may shorten the 30-day period for making changes, approving, or refusing to approve the transcript.

The deposition officer shall indicate on the original of the transcript, if the deponent has not already done so at the office of the deposition officer, any action taken by the deponent and indicate on the original of the transcript, the deponent's approval of, or failure or refusal to approve, the transcript. The deposition officer shall also notify in writing the parties attending the deposition of any changes which the deponent timely made in person. If the deponent fails or refuses to approve the transcript within the allotted period, the deposition shall be given the same effect as though it had been approved, subject to any changes timely made by the deponent. However, on a seasonable motion to suppress the deposition, accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion, the court may determine that the reasons given for the failure or refusal to approve the transcript require rejection of the deposition in whole or in part.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to suppress a deposition, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(2) If there is no stenographic transcription of the deposition, the deposition officer shall send written notice to the deponent and to all parties attending the deposition that the recording is available for review, unless the deponent and all these parties agree on the record to waive the hearing or viewing of an audiotape or videotape recording of the testimony. For 30 days following this notice the deponent, either in person or by signed letter to the deposition officer, may change the substance of the answer to any question.

The deposition officer shall set forth in a writing to accompany the recording any changes made by the deponent, as well as either the deponent's signature identifying the deposition as his or her own, or a statement of the deponent's failure to supply the signature, or to contact the officer within the allotted period. When a deponent fails to contact the officer within the allotted period, or expressly refuses by a signature to identify the deposition as his or her own, the deposition shall be given the same effect as though signed. However, on a seasonable motion to suppress the deposition, accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion, the court may determine that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to suppress a deposition, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(r) (1) The deposition officer shall certify on the transcript of the deposition, or in a writing accompanying an audiotaped or videotaped deposition as described in paragraph (2) of subdivision (q), that the deponent was duly sworn and that the transcript or recording is a true record of the testimony given.

(2) When prepared as a rough draft transcript, the transcript of the deposition may not be certified and may not be used, cited, or transcribed as the certified transcript of the deposition proceedings. The rough draft transcript may not be cited or used in any way or at any time to rebut or contradict the certified transcript of deposition proceedings as provided by the deposition officer.

(s) (1) The certified transcript of a deposition shall not be filed with the court. Instead, the deposition officer shall securely seal that transcript in an envelope or package endorsed with the title of the action and marked: "Deposition of (here insert name of deponent)," and shall promptly transmit it to the attorney for the party who noticed the deposition. This attorney shall store it under conditions that will protect it against loss, destruction, or tampering.

The attorney to whom the transcript of a deposition is transmitted shall retain custody of it until six months after final disposition of the action. At that time, the transcript may be destroyed, unless the

court, on motion of any party and for good cause shown, orders that the transcript be preserved for a longer period.

(2) An audiotape or videotape record of deposition testimony, including a certified tape made by an operator qualified under subparagraph (B) of paragraph (2) of subdivision (*l*), shall not be filed with the court. Instead, the operator shall retain custody of that record and shall store it under conditions that will protect it against loss, destruction, or tampering, and preserve as far as practicable the quality of the tape and the integrity of the testimony and images it contains.

At the request of any party to the action, including a party who did not attend the taking of the deposition testimony, or at the request of the deponent, that operator shall promptly (A) permit the one making the request to hear or to view the tape on receipt of payment of a reasonable charge for providing the facilities for hearing or viewing the tape, and (B) furnish a copy of the audiotape or the videotape recording to the one making the request on receipt of payment of the reasonable cost of making that copy of the tape.

The attorney or operator who has custody of an audiotape or videotape record of deposition testimony shall retain custody of it until six months after final disposition of the action. At that time, the audiotape or videotape may be destroyed or erased, unless the court, on motion of any party and for good cause shown, orders that the tape be preserved for a longer period.

(t) Once any party has taken the deposition of any natural person, including that of a party to the action, neither the party who gave, nor any other party who has been served with a deposition notice pursuant to subdivision (c) may take a subsequent deposition of that deponent. However, for good cause shown, the court may grant leave to take a subsequent deposition, and the parties, with the consent of any deponent who is not a party, may stipulate that a subsequent deposition be taken. This subdivision does not preclude taking one subsequent deposition of a natural person who has previously been examined (1) as a result of that person's designation to testify on behalf of an organization under subdivision (d), or (2) for the limited purpose of discovering pursuant to Section 485.230 the identity, location, and value of property in which the deponent has an interest. This subdivision does not authorize the taking of more than one deposition for the limited purpose of Section 485.230.

(u) At the trial or any other hearing in the action, any part or all of a deposition may be used against any party who was present or represented at the taking of the deposition, or who had due notice of the deposition and did not serve a valid objection under subdivision (g), so far as admissible under the rules of evidence applied as though the deponent were then present and testifying as a witness, in accordance with the following provisions:

(1) Any party may use a deposition for the purpose of contradicting or impeaching the testimony of the deponent as a witness, or for any other purpose permitted by the Evidence Code.

(2) An adverse party may use for any purpose, a deposition of a party to the action, or of anyone who at the time of taking the deposition was an officer, director, managing agent, employee, agent, or designee under subdivision (d) of a party. It is not ground for objection to the use of a deposition of a party under this paragraph by an adverse party that the deponent is available to testify, has testified, or will testify at the trial or other hearing.

(3) Any party may use for any purpose the deposition of any person or organization, including that of any party to the action, if the court finds any of the following:

(A) The deponent resides more than 150 miles from the place of the trial or other hearing.

(B) The deponent, without the procurement or wrongdoing of the proponent of the deposition for the purpose of preventing testimony in open court, is (i) exempted or precluded on the ground of privilege from testifying concerning the matter to which the deponent's testimony is relevant, (ii) disqualified from testifying, (iii) dead or unable to attend or testify because of existing physical or mental illness or infirmity, (iv) absent from the trial or other hearing and the court is unable to compel the deponent's attendance by its process, or (v) absent from the trial or other hearing and the proponent of the deposition has exercised reasonable diligence but has been unable to procure the deponent's attendance by the court's process.

(C) Exceptional circumstances exist that make it desirable to allow the use of any deposition in the interests of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court.

(4) Any party may use a videotape deposition of a treating or consulting physician or of any expert witness even though the deponent is available to testify if the deposition notice under subdivision (d) reserved the right to use the deposition at trial, and if that party has complied with subparagraph (I) of paragraph (2) of subdivision (*l*).

(5) Subject to the requirements of this section, a party may offer in evidence all or any part of a deposition, and if the party introduces only part of the deposition, any other party may introduce any other parts that are relevant to the parts introduced.

(6) Substitution of parties does not affect the right to use depositions previously taken.

(7) When an action has been brought in any court of the United States or of any state, and another action involving the same subject matter is subsequently brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the initial action may be used in the

subsequent action as if originally taken in that subsequent action. A deposition previously taken may also be used as permitted by the Evidence Code.

SEC. 23. Section 2031 of the Code of Civil Procedure is amended to read:

2031. (a) Any party may obtain discovery within the scope delimited by Section 2017, and subject to the restrictions set forth in Section 2019, by inspecting documents, tangible things, and land or other property that are in the possession, custody, or control of any other party to the action.

(1) A party may demand that any other party produce and permit the party making the demand, or someone acting on that party's behalf, to inspect and to copy a document that is in the possession, custody, or control of the party on whom the demand is made.

(2) A party may demand that any other party produce and permit the party making the demand, or someone acting on that party's behalf, to inspect and to photograph, test, or sample any tangible things that are in the possession, custody, or control of the party on whom the demand is made.

(3) A party may demand that any other party allow the party making the demand, or someone acting on that party's behalf, to enter on any land or other property that is in the possession, custody, or control of the party on whom the demand is made, and to inspect and to measure, survey, photograph, test, or sample the land or other property, or any designated object or operation on it.

(b) A defendant may make a demand for inspection without leave of court at any time. A plaintiff may make a demand for inspection without leave of court at any time that is 10 days after the service of the summons on, or in unlawful detainer actions within five days after service of the summons on or appearance by, the party to whom the demand is directed, whichever occurs first. However, on motion with or without notice, the court, for good cause shown, may grant leave to a plaintiff to make an inspection demand at an earlier time.

(c) A party demanding an inspection shall number each set of demands consecutively. In the first paragraph immediately below the title of the case, there shall appear the identity of the demanding party, the set number, and the identity of the responding party. Each demand in a set shall be separately set forth, identified by number or letter, and shall do all of the following:

(1) Designate the documents, tangible things, or land or other property to be inspected either by specifically describing each individual item or by reasonably particularizing each category of item.

(2) Specify a reasonable time for the inspection that is at least 30 days after service of the demand, or in unlawful detainer actions at least five days after service of the demand, unless the court for good cause shown has granted leave to specify an earlier date.

(3) Specify a reasonable place for making the inspection, copying, and performing any related activity.

(4) Specify any related activity that is being demanded in addition to an inspection and copying, as well as the manner in which that related activity will be performed, and whether that activity will permanently alter or destroy the item involved.

(d) The party demanding an inspection shall serve a copy of the inspection demand on the party to whom it is directed and on all other parties who have appeared in the action.

(e) When an inspection of documents, tangible things or places has been demanded, the party to whom the demand has been directed, and any other party or affected person or organization, may promptly move for a protective order. This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion.

The court, for good cause shown, may make any order that justice requires to protect any party or other natural person or organization from unwarranted annoyance, embarrassment, or oppression, or undue burden and expense. This protective order may include, but is not limited to, one or more of the following directions:

(1) That all or some of the items or categories of items in the inspection demand need not be produced or made available at all.

(2) That the time specified in subdivision (h) to respond to the set of inspection demands, or to a particular item or category in the set, be extended.

(3) That the place of production be other than that specified in the inspection demand.

(4) That the inspection be made only on specified terms and conditions.

(5) That a trade secret or other confidential research, development, or commercial information not be disclosed, or be disclosed only to specified persons or only in a specified way.

(6) That the items produced be sealed and thereafter opened only on order of the court.

If the motion for a protective order is denied in whole or in part, the court may order that the party to whom the demand was directed provide or permit the discovery against which protection was sought on terms and conditions that are just.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion for a protective order, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(f) The party to whom an inspection demand has been directed shall respond separately to each item or category of item by a statement that the party will comply with the particular demand for inspection and any related activities, a representation that the party

lacks the ability to comply with the demand for inspection of a particular item or category of item, or an objection to the particular demand.

In the first paragraph of the response immediately below the title of the case, there shall appear the identity of the responding party, the set number, and the identity of the demanding party. Each statement of compliance, each representation, and each objection in the response shall bear the same number and be in the same sequence as the corresponding item or category in the demand, but the text of that item or category need not be repeated.

(1) A statement that the party to whom an inspection demand has been directed will comply with the particular demand shall state that the production, inspection, and related activity demanded will be allowed either in whole or in part, and that all documents or things in the demanded category that are in the possession, custody, or control of that party and to which no objection is being made will be included in the production.

Any documents demanded shall either be produced as they are kept in the usual course of business, or be organized and labeled to correspond with the categories in the demand. If necessary, the responding party at the reasonable expense of the demanding party shall, through detection devices, translate any data compilations included in the demand into reasonably usable form.

(2) A representation of inability to comply with the particular demand for inspection shall affirm that a diligent search and a reasonable inquiry has been made in an effort to comply with that demand. This statement shall also specify whether the inability to comply is because the particular item or category has never existed, has been destroyed, has been lost, misplaced, or stolen, or has never been, or is no longer, in the possession, custody, or control of the responding party. The statement shall set forth the name and address of any natural person or organization known or believed by that party to have possession, custody, or control of that item or category of item.

(3) If only part of an item or category of item in an inspection demand is objectionable, the response shall contain a statement of compliance, or a representation of inability to comply with respect to the remainder of that item or category. If the responding party objects to the demand for inspection of an item or category of item, the response shall (A) identify with particularity any document, tangible thing, or land falling within any category of item in the demand to which an objection is being made, and (B) set forth clearly the extent of, and the specific ground for, the objection. If an objection is based on a claim of privilege, the particular privilege invoked shall be stated. If an objection is based on a claim that the information sought is protected work product under Section 2018, that claim shall be expressly asserted.

(g) The party to whom the demand for inspection is directed shall sign the response under oath unless the response contains only objections. If that party is a public or private corporation or a partnership or association or governmental agency, one of its officers or agents shall sign the response under oath on behalf of that party. If the officer or agent signing the response on behalf of that party is an attorney acting in that capacity for a party, that party waives any lawyer-client privilege and any protection for work product under Section 2018 during any subsequent discovery from that attorney concerning the identity of the sources of the information contained in the response. The attorney for the responding party shall sign any responses that contain an objection.

(h) Within 30 days after service of an inspection demand, or in unlawful detainer actions within five days of an inspection demand, the party to whom the demand is directed shall serve the original of the response to it on the party making the demand, and a copy of the response on all other parties who have appeared in the action, unless on motion of the party making the demand the court has shortened the time for response, or unless on motion of the party to whom the demand has been directed, the court has extended the time for response. In unlawful detainer actions, the party to whom the demand is directed shall have at least five days from the date of service of the demand to respond unless on motion of the party making the demand the court has shortened the time for the response.

(i) The party demanding an inspection and the responding party may agree to extend the time for service of a response to a set of inspection demands, or to particular items or categories of items in a set, to a date beyond that provided in subdivision (h). This agreement may be informal, but it shall be confirmed in a writing that specifies the extended date for service of a response. Unless this agreement expressly states otherwise, it is effective to preserve to the responding party the right to respond to any item or category of item in the demand to which the agreement applies in any manner specified in subdivision (f).

(j) The inspection demand and the response to it shall not be filed with the court. The party demanding an inspection shall retain both the original of the inspection demand, with the original proof of service affixed to it, and the original of the sworn response until six months after final disposition of the action. At that time, both originals may be destroyed, unless the court, on motion of any party and for good cause shown, orders that the originals be preserved for a longer period.

(k) If a party to whom an inspection demand has been directed fails to serve a timely response to it, that party waives any objection to the demand, including one based on privilege or on the protection for work product under Section 2018. However, the court, on motion, may relieve that party from this waiver on its determination that (1)

the party has subsequently served a response that is in substantial compliance with subdivision (f), and (2) the party's failure to serve a timely response was the result of mistake, inadvertence, or excusable neglect.

The party making the demand may move for an order compelling response to the inspection demand. The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel a response to an inspection demand, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust. If a party then fails to obey the order compelling a response, the court may make those orders that are just, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Section 2023. In lieu of or in addition to that sanction, the court may impose a monetary sanction under Section 2023.

(*l*) If the party demanding an inspection, on receipt of a response to an inspection demand, deems that (1) a statement of compliance with the demand is incomplete, (2) a representation of inability to comply is inadequate, incomplete, or evasive, or (3) an objection in the response is without merit or too general, that party may move for an order compelling further response to the demand. This motion (A) shall set forth specific facts showing good cause justifying the discovery sought by the inspection demand, and (B) shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of any issue presented by it.

Unless notice of this motion is given within 45 days of the service of the response, or any supplemental response, or on or before any specific later date to which the demanding party and the responding party have agreed in writing, the demanding party waives any right to compel a further response to the inspection demand.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel further response to an inspection demand, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

If a party fails to obey an order compelling further response, the court may make those orders that are just, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Section 2023. In lieu of or in addition to that sanction, the court may impose a monetary sanction under Section 2023.

(m) If a party filing a response to a demand for inspection under subdivision (f) thereafter fails to permit the inspection in accordance with that party's statement of compliance, the party demanding the inspection may move for an order compelling compliance.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel compliance with an inspection demand, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

If a party then fails to obey an order compelling inspection, the court may make those orders that are just, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Section 2023. In lieu of or in addition to that sanction, the court may impose a monetary sanction under Section 2023.

SEC. 24. Section 8603 of the Commercial Code is amended to read:

8603. (a) This division does not affect an action or proceeding commenced before this division becomes operative.

(b) If a security interest in a security is perfected at the date this division becomes operative, and the action by which the security interest was perfected would suffice to perfect a security interest under this division, no further action is required to continue perfection. If a security interest in a security is perfected at the date this division takes effect but the action by which the security interest was perfected would not suffice to perfect a security interest under this division, the security interest remains perfected for a period of four months after the operative date and continues perfected thereafter if appropriate action to perfect under this division is taken within that period. If a security interest is perfected at the date this division becomes operative and the security interest can be perfected by filing under Division 9 (commencing with Section 9109), a financing statement signed by the secured party instead of the debtor may be filed within that period to continue perfection or thereafter to perfect and that financing statement shall contain a statement that it is being filed pursuant to this section.

SEC. 25. Section 9501 of the Commercial Code, as amended by Section 16 of Chapter 124 of the Statutes of 1996, is amended to read:

9501. (1) When a debtor is in default under a security agreement, a secured party has the rights and remedies provided in this chapter and, except as limited by subdivision (3), those provided in the security agreement. The secured party may reduce his or her claim to judgment, foreclose, or otherwise enforce the security interest by any available judicial procedure. If the collateral is documents the secured party may proceed either as to the documents or as to the goods covered thereby. A secured party in possession has the rights, remedies, and duties provided in Section 9207. The rights and remedies referred to in this subdivision are cumulative.

(2) After default, the debtor has the rights and remedies provided in this chapter, those provided in the security agreement, and those provided in Section 9207.

(3) To the extent that they give rights to the debtor and impose duties on the secured party, the rules stated in the subdivisions referred to below may not be waived or varied except as provided with respect to compulsory disposition of collateral (subdivision (3) of Section 9504 and Section 9505) and with respect to redemption of collateral (Section 9506), but the parties may by agreement determine the standards by which the fulfillment of these rights and duties is to be measured if those standards are not manifestly unreasonable:

(a) Subdivision (2) of Section 9502 and subdivision (2) of Section 9504, insofar as they require accounting for surplus proceeds of collateral and deal with the debtor's liability for any deficiency;

(b) Subdivision (3) of Section 9504 and subdivision (1) of Section 9505 that deal with disposition of collateral;

(c) Subdivision (2) of Section 9505 that deals with acceptance of collateral as discharge of obligation;

(d) Section 9506 that deals with redemption of collateral; and

(e) Subdivision (1) of Section 9507 that deals with the secured party's liability for failure to comply with this chapter.

(4) If an obligation secured by a security interest in personal property or fixtures (Section 9313(1)(a)) is also secured by an interest in real property or an estate therein:

(a) The secured party may do any of the following:

(i) Proceed, in any sequence, (1) in accordance with the secured party's rights and remedies in respect of real property as to the real property security, and (2) in accordance with this chapter as to the personal property or fixtures.

(ii) Proceed in any sequence, as to both some or all of the real property and some or all of the personal property or fixtures in accordance with the secured party's rights and remedies in respect of the real property, by including the portion of the personal property or fixtures selected by the secured party in the judicial or nonjudicial foreclosure of the real property in accordance with the procedures applicable to real property. In proceeding under this subparagraph, (A) no provision of this chapter other than this subparagraph, subparagraph (iii) of paragraph (d), and paragraphs (g) and (h) shall apply to any aspect of the foreclosure; (B) a power of sale under the deed of trust or mortgage shall be exercisable with respect to both the real property and the personal property or fixtures being sold; and (C) the sale may be conducted by the mortgagee under the mortgage or by the trustee under the deed of trust. The secured party shall not be deemed to have elected irrevocably to proceed as to both real property and personal property or fixtures as provided in this subparagraph with respect to any particular property, unless and until that particular property actually has been disposed of pursuant to a unified sale (judicial or nonjudicial) conducted in accordance with the procedures applicable to real property, and then only as to the property so sold.

(iii) Proceed, in any sequence, as to part of the personal property or fixtures as provided in subparagraph (i), and as to other of the personal property or fixtures as provided in subparagraph (ii).

(b) (i) Except as otherwise provided in paragraph (c), provisions and limitations of any law respecting real property and obligations secured by an interest in real property or an estate therein, including, but not limited to, Section 726 of the Code of Civil Procedure, provisions regarding acceleration or reinstatement of obligations secured by an interest in real property or an estate therein, prohibitions against deficiency judgments, limitations on deficiency judgments based on the value of the collateral, limitations on the right to proceed as to collateral, and requirements that a creditor resort either first or at all to its security, do not in any way apply to either (1) any personal property or fixtures other than personal property or fixtures as to which the secured party has proceeded or is proceeding under subparagraph (ii) of paragraph (a), or (2) the obligation.

(ii) Pursuant to, but without limiting subparagraph (i), in the event that an obligation secured by personal property or fixtures would otherwise become unenforceable by reason of Section 726 of the Code of Civil Procedure or any requirement that a creditor resort first to its security, then, notwithstanding that section or any similar requirement, the obligation shall nevertheless remain enforceable to the full extent necessary to permit a secured party to proceed against personal property or fixtures securing the obligation in accordance with the secured party's rights and remedies as permitted under this chapter.

(c) (i) Paragraph (b) does not limit the application of Section 580b of the Code of Civil Procedure.

(ii) If the secured party commences an action, as defined in Section 22 of the Code of Civil Procedure, and the action seeks a monetary judgment on the debt, paragraph (b) does not prevent the debtor's assertion of any right to require the inclusion in the action of any interest in real property or an estate therein securing the debt. If a monetary judgment on the debt is entered in the action, paragraph (b) does not prevent the debtor's assertion of the subsequent unenforceability of the encumbrance on any interest in real property or an estate therein securing the debt and not included in the action.

(iii) Nothing in paragraph (b) shall be construed to excuse compliance with Section 2924c of the Civil Code as a prerequisite to the sale of real property, but that section has no application to the right of a secured party to proceed as to personal property or fixtures except, and then only to the extent that, the secured party is proceeding as to personal property or fixtures in a unified sale as provided in subparagraph (ii) of paragraph (a).

(iv) Paragraph (b) does not deprive the debtor of the protection of Section 580d of the Code of Civil Procedure against a deficiency

judgment following a sale of the real property collateral pursuant to a power of sale in a deed of trust or mortgage.

(v) Paragraph (b) shall not affect, nor shall it determine the applicability or inapplicability of, any law respecting real property or obligations secured in whole or in part by real property with respect to a loan or a credit sale made to any individual primarily for personal, family, or household purposes.

(vi) Paragraph (b) does not deprive the debtor of the protection of Section 580a of the Code of Civil Procedure following a sale of real property collateral.

(vii) If the secured party violates any statute or rule of law that requires a creditor who holds an obligation secured by an interest in real property or an estate therein to resort first to its security before resorting to any property of the debtor that does not secure the obligation, paragraph (b) does not prevent the debtor's assertion of any right to require correction of the violation, any right of the secured party to correct the violation, or the debtor's assertion of the subsequent unenforceability of the encumbrance on any interest in real property or an estate therein securing the obligation, or the debtor's assertion of the subsequent unenforceability of the obligation except to the extent that the obligation is preserved by subparagraph (ii) of paragraph (b).

(d) If the secured party realizes proceeds from the disposition of collateral that is personal property or fixtures, the following provisions shall apply:

(i) The disposition of the collateral, the realization of the proceeds, the application of the proceeds, or any one or more of the foregoing shall not operate to cure any nonmonetary default.

(ii) The disposition of the collateral, the realization of the proceeds, the application of the proceeds, or any one or more of the foregoing shall not operate to cure any monetary default (although the application of the proceeds shall, to the extent of those proceeds, satisfy the secured obligation) so as to affect in any way the secured party's rights and remedies under this chapter with respect to any remaining personal property or fixtures collateral.

(iii) All proceeds so realized shall be applied by the secured party to the secured obligation in accordance with the agreement of the parties and applicable law.

(e) An action by the secured party utilizing any available judicial procedure, as provided in subdivision (1), shall in no way be affected by omission of a prayer for a monetary judgment on the debt. Notwithstanding Section 726 of the Code of Civil Procedure, any prohibition against splitting causes of action or any other statute or rule of law, a judicial action that neither seeks nor results in a monetary judgment on the debt shall not preclude a subsequent action seeking a monetary judgment on the debt or any other relief.

(f) As used in this subdivision, "monetary judgment on the debt" means a judgment for the recovery from the debtor of all or part of

the principal amount of the secured obligation, including, for purposes of this subdivision, contractual interest thereon. "Monetary judgment on the debt" does not include a judgment that provides only for other relief (whether or not that other relief is secured by the collateral), such as one or more forms of nonmonetary relief, and monetary relief ancillary to any of the foregoing, such as attorneys' fees and costs incurred in seeking the relief.

(g) If a secured party fails to comply with the procedures applicable to real property in proceeding as to both real and personal property under subparagraph (ii) of paragraph (a), a purchaser for value of any interest in the real property at judicial or nonjudicial foreclosure proceedings conducted pursuant to subparagraph (ii) of paragraph (a) takes that interest free from any claim or interest of another person, or any defect in title, based upon that noncompliance, unless:

(i) The purchaser is the secured party and the failure to comply with this chapter occurred other than in good faith; or

(ii) The purchaser is other than the secured party and at the time of sale of the real property at that foreclosure the purchaser had knowledge of the failure to comply with this chapter and that the noncompliance occurred other than in good faith.

Even if the purchaser at the foreclosure sale does not take his or her interest free of claims, interests, or title defects based upon that noncompliance with this chapter, a subsequent purchaser for value who acquires an interest in that real property from the purchaser at that foreclosure takes that interest free from any claim or interest of another person, or any defect in title, based upon that noncompliance, unless at the time of acquiring the interest the subsequent purchaser has knowledge of the failure to comply with this chapter and that the noncompliance occurred other than in good faith.

(h) If a secured party proceeds by way of a unified sale under subparagraph (ii) of paragraph (a), then, for purposes of applying Section 580a or subdivision (b) of Section 726 of the Code of Civil Procedure to any such unified sale, the personal property or fixtures included in the unified sale shall be deemed to be included in the "real property or other interest sold," as that term is used in Section 580a or subdivision (b) of Section 726 of the Code of Civil Procedure.

(5) When a secured party has reduced his or her claim to judgment, the lien of any levy that may be made upon his or her collateral by virtue of any execution based upon the judgment shall relate back to the date of the perfection of the security interest in the collateral. A judicial sale, pursuant to that execution, is a foreclosure of the security interest by judicial procedure within the meaning of this section, and the secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this division.

(6) This section shall be repealed on January 1, 2002.

SEC. 26. Section 9502 of the Commercial Code, as amended by Section 7 of Chapter 591 of the Statutes of 1995, is amended to read:

9502. (1) When so agreed and in any event on default the secured party is entitled to notify an account debtor or the obligor on an instrument to make payment to him or her whether or not the assignor was theretofore making collections on the collateral, and also to take control of any proceeds to which he or she is entitled under Section 9306.

(2) (a) A secured party who by agreement is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor and who undertakes to collect from the account debtors or obligors must proceed in a commercially reasonable manner and may deduct his or her reasonable expenses of realization from the collections.

(b) If the security agreement secures an indebtedness, the secured party must account to the debtor for any surplus.

(c) If the security agreement secures an indebtedness, the debtor is liable for any deficiency unless otherwise agreed, but only (i) if the secured party in collection pursuant to this section has proceeded in a commercially reasonable manner, or (ii) as provided in paragraph (d).

(d) If the secured party in collecting pursuant to this section has not proceeded in a commercially reasonable manner, the debtor is liable, subject to paragraph (e), for any deficiency only if the balance of the indebtedness immediately before the collection exceeds the amount that the secured party establishes would have been realized had the secured party in collecting pursuant to this section proceeded in a commercially reasonable manner, and the liability is limited to the excess.

(e) Notwithstanding paragraph (d), if the secured party in collecting pursuant to this section has not proceeded in a commercially reasonable manner, and if the transaction was entered into by the debtor primarily for personal, family, or household purposes or if the amount of the indebtedness immediately before the collection was one hundred thousand dollars ($100,000) or less, then the debtor is not liable for any deficiency.

(f) Upon entry of a final judgment that the debtor is not liable for a deficiency by reason of either paragraph (d) or paragraph (e), the secured party may neither obtain a deficiency judgment nor retain a security interest in any other collateral of the debtor that secured the indebtedness for which the debtor is no longer liable.

(g) To the extent, subsequent to a collection that does not satisfy the conditions set forth in clause (i) of paragraph (c), or subsequent to a disposition that does not satisfy any one or more of the conditions set forth in clause (i) of paragraph (b) of subdivision (2) of Section 9504, the secured party collects pursuant to this section on other collateral securing the same indebtedness, the debtor may, to the extent he or she is no longer liable for a deficiency judgment by

reason of paragraph (d) or paragraph (e), or by reason of paragraph (c) or paragraph (d) of subdivision (2) of Section 9504, recover the proceeds realized from those subsequent collections, as well as any damages to which the debtor may be entitled if the subsequent collection is itself noncomplying or otherwise wrongful. Except for secured transactions entered by the debtor primarily for personal, family, or household purposes, neither the subsequent collections nor the exercise of any other remedy by the secured party subsequent to a noncomplying collection or disposition shall be deemed tortious or otherwise wrongful based, in whole or in part, on the fact that it occurred subsequent to a noncomplying collection or disposition.

(h) If the underlying transaction was a sale of accounts or chattel paper, the debtor is entitled to any surplus or is liable for any deficiency only if the security agreement so provides. The provisions of subdivision (b) of Section 701.040 of the Code of Civil Procedure relating to the payment of proceeds apply only if the security agreement provides that the debtor is entitled to any surplus.

(i) Nothing herein shall deprive the debtor of any right to recover damages from the secured party under subdivision (1) of Section 9507 or to offset any such damages against any claim by the secured party for a deficiency, or of any right or remedy to which the debtor may be entitled under any other law. However, except in the case of any secured party that has willfully failed to proceed in a commercially reasonable manner in collection pursuant to this section, or in the case of a debtor who entered the secured transaction primarily for personal, family, or household purposes, any damages recoverable by the debtor shall be reduced by the amount of any deficiency that would have resulted had the secured party in collecting pursuant to this section proceeded in conformity with the condition set forth in clause (i) of paragraph (c) regardless whether or not the debtor is liable for the deficiency under paragraph (c) or (d).

(3) This section shall be repealed on January 1, 2002.

SEC. 27. Section 9504 of the Commercial Code, as amended by Section 8 of Chapter 591 of the Statutes of 1995, is amended to read:

9504. (1) A secured party after default may sell, lease or otherwise dispose of any or all of the collateral in its then condition or following any commercially reasonable preparation or processing. Any sale of goods is subject to the division on sales (Division 2). The proceeds of disposition shall be applied in the order following to:

(a) The reasonable expenses of retaking, holding, preparing for sale or lease, selling, leasing and the like and, to the extent provided for in the agreement and not prohibited by law, the reasonable attorneys' fees and legal expenses incurred by the secured party;

(b) The satisfaction of indebtedness secured by the security interest under which the disposition is made;

(c) The satisfaction of indebtedness secured by any subordinate security interest in the collateral if written notification of demand

therefor is received before distribution of the proceeds is completed and to the satisfaction of any subordinate attachment lien or execution lien pursuant to subdivision (b) of Section 701.040 of the Code of Civil Procedure if notice of the levy of attachment or execution is received before distribution of the proceeds is completed. If requested by the secured party, the holder of a subordinate security interest must seasonably furnish reasonable proof of his or her interest, and unless he or she does so, the secured party need not comply with his or her demand.

(2) (a) If the security interest secures an indebtedness, the secured party must account to the debtor for any surplus except as provided in Section 701.040 of the Code of Civil Procedure.

(b) If the security interest secures an indebtedness, the debtor is liable for any deficiency unless otherwise agreed or otherwise provided in the Retail Installment Sales Act, and in particular Section 1812.5 of the Civil Code or any other statute, but only (i) if the debtor was given notice, if and as required by subdivision (3), of the disposition of the collateral in accordance with subdivision (3), and the disposition of the collateral by the secured party pursuant to this section was conducted in good faith and in a commercially reasonable manner, or (ii) except for secured transactions entered by a debtor primarily for personal, family, or household purposes, as provided in paragraph (c).

(c) If the secured party has provided notice to the debtor pursuant to subdivision (3), if so required, but has not proceeded in a commercially reasonable manner in the disposition of the collateral, the debtor is liable, subject to paragraphs (b) and (d), for any deficiency only if the balance of the indebtedness immediately before the disposition exceeds the amount that the secured party establishes would have been realized had the disposition of the collateral by the secured party pursuant to this section been conducted in conformity with the conditions set forth in clause (i) of paragraph (b), and the liability is limited to the excess. This paragraph does not apply to secured transactions entered by a debtor primarily for personal, family, or household purposes.

(d) Notwithstanding paragraph (c), if any one or more of the conditions set forth in clause (i) of paragraph (b) are not proved by the secured party to be satisfied with respect to the disposition, then the debtor is not liable for any deficiency if either:

(i) All of the collateral immediately before the disposition was consumer goods and the amount of the indebtedness immediately before the disposition was one hundred thousand dollars ($100,000) or less.

(ii) The amount of the indebtedness immediately before the disposition was fifty thousand dollars ($50,000) or less.

(e) Upon entry of a final judgment that the debtor is not liable for a deficiency by reason of either paragraph (c) or paragraph (d), the secured party may neither obtain a deficiency judgment nor retain

a security interest in any other collateral of the debtor that secured the indebtedness for which the debtor is no longer liable.

(f) To the extent, subsequent to a disposition that does not satisfy any one or more of the conditions set forth in clause (i) of paragraph (b), or subsequent to a collection that does not satisfy the condition set forth in clause (i) of paragraph (c) of subdivision (2) of Section 9502, the secured party disposes pursuant to this section of other collateral securing the same indebtedness, the debtor may, to the extent he or she is no longer liable for a deficiency judgment by reason of paragraph (c) or paragraph (d), or by reason of paragraph (d) or paragraph (e) of subdivision (2) of Section 9502, recover the proceeds realized from the subsequent dispositions, as well as any damages to which the debtor may be entitled if the subsequent disposition is itself noncomplying or otherwise wrongful. Except for secured transactions entered by a debtor primarily for personal, family, or household purposes, neither the subsequent dispositions nor the exercise of any other remedy by the secured party subsequent to a noncomplying disposition or collection shall be deemed tortious or otherwise wrongful based, in whole or in part, on the fact that it occurred subsequent to a noncomplying disposition or collection.

(g) If the underlying transaction was a sale of accounts or chattel paper, the debtor is entitled to any surplus or is liable for any deficiency only if the security agreement so provides. The provisions of subdivision (b) of Section 701.040 of the Code of Civil Procedure relating to the payment of proceeds and the liability of the secured party apply only if the security agreement provides that the debtor is entitled to any surplus.

(h) Nothing herein shall deprive the debtor of any right to recover damages from the secured party under subdivision (1) of Section 9507 or to offset any such damages against any claim by the secured party for a deficiency, or of any right or remedy to which the debtor may be entitled under any other law; provided, however, that, except in the case of any secured party that has willfully failed to conduct the disposition of collateral in good faith and in a commercially reasonable manner or in the case of a debtor who entered the secured transaction primarily for personal, family, or household purposes, any damages recoverable by the debtor shall be reduced by the amount of any deficiency that would have resulted had the disposition of the collateral by the secured party been conducted in conformity with the conditions set forth in clause (i) of paragraph (b) regardless of whether or not the debtor is liable for the deficiency under paragraph (b) or (c).

(3) A sale or lease of collateral may be as a unit or in parcels, at wholesale or retail and at any time and place and on any terms, provided the secured party acts in good faith and in a commercially reasonable manner. Unless collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a

recognized market, the secured party must give to the debtor, if he or she has not signed after default a statement renouncing or modifying his or her right to notification of sale, and to any other person who has a security interest in the collateral and who has filed with the secured party a written request for notice giving his or her address (before that secured party sends his or her notification to the debtor or before debtor's renunciation of his or her rights), a notice in writing of the time and place of any public sale or of the time on or after which any private sale or other intended disposition is to be made. Such notice must be delivered personally or be deposited in the United States mail postage prepaid addressed to the debtor at his or her address as set forth in the financing statement or as set forth in the security agreement or at such other address as may have been furnished to the secured party in writing for this purpose, or, if no address has been so set forth or furnished, at his or her last known address, and to any other secured party at the address set forth in his or her request for notice, at least five days before the date fixed for any public sale or before the day on or after which any private sale or other disposition is to be made. Notice of the time and place of a public sale shall also be given at least five days before the date of sale by publication once in a newspaper of general circulation published in the county in which the sale is to be held or in case no newspaper of general circulation is published in the county in which the sale is to be held, in a newspaper of general circulation published in the county in this state that (1) is contiguous to the county in which the sale is to be held and (2) has, by comparison with all similarly contiguous counties, the highest population based upon total county population as determined by the most recent federal decennial census published by the Bureau of the Census. Any public sale shall be held in the county or place specified in the security agreement, or if no county or place is specified in the security agreement, in the county in which the collateral or any part thereof is located or in the county in which the debtor has his or her residence or chief place of business, or in the county in which the secured party has his or her residence or a place of business if the debtor does not have a residence or chief place of business within this state. If the collateral is located outside of this state or has been removed from this state, a public sale may be held in the locality in which the collateral is located. Any public sale may be postponed from time to time by public announcement at the time and place last scheduled for the sale. The secured party may buy at any public sale and if the collateral is customarily sold in a recognized market or is the subject of widely or regularly distributed standard price quotations he or she may buy at private sale. Any sale of which notice is delivered or mailed and published as herein provided and that is held as herein provided is a public sale.

(4) When collateral is disposed of by a secured party after default, the disposition transfers to a purchaser for value all of the debtor's

rights therein, discharges the security interest under which it is made and any security interest or lien subordinate thereto. The purchaser takes free of all such rights and interest even though the secured party fails to comply with the requirements of this chapter or of any judicial proceedings.

(a) In the case of a public sale, if the purchaser has no knowledge of any defects in the sale and if he or she does not buy in collusion with the secured party, other bidders or the person conducting the sale; or

(b) In any other case, if the purchaser acts in good faith.

(5) A person who is liable to a secured party under a guaranty, indorsement, repurchase agreement or the like and who receives a transfer of collateral from the secured party or is subrogated to his or her rights has thereafter the rights and duties of the secured party. Such a transfer of collateral is not a sale or disposition of the collateral under this division.

(6) This section shall be repealed on January 1, 2002.

SEC. 28. Section 8023 of the Elections Code is amended to read:

8023. (a) Except in the case of a judicial office filled in accordance with subdivision (d) of Section 16 of Article VI of the Constitution, every candidate for a judicial office, not more than 14 nor less than five days prior to the first day on which his or her nomination papers may be circulated and signed or may be presented for filing, shall file in the office of the elections official in which his or her nomination papers are required to be filed or left for examination, a written and signed declaration in duplicate of his or her intention to become a candidate for that office on a form to be supplied by the elections officials. A candidate for a numerically designated judicial office shall state in his or her declaration for which office he or she intends to become a candidate. This section shall apply to all judicial offices whether numerically designated or not.

(b) No person may be a candidate nor have his or her name printed upon any ballot as a candidate for judicial office unless he or she has filed the declaration of intention provided for in this section. If the incumbent of a judicial office fails to file a declaration of intention by the end of the period specified in subdivision (a), persons other than the incumbent may file declarations of intention no later than the first day for filing nomination papers.

(c) No candidate for a judicial office shall be required to state his or her residential address on the declaration of intention provided for in this section. However, in cases where the candidate does not state his or her residential address on the declaration of intention, the elections official shall verify that the address is within the appropriate political subdivision and add the notation "verified" to the residential address line of the form.

SEC. 29. Section 8040 of the Elections Code is amended to read:

8040. (a) The declaration of candidacy by a candidate shall be substantially as follows:

DECLARATION OF CANDIDACY

I hereby declare myself a _____ Party candidate for nomination to the office of _____ District Number _____ to be voted for at the primary election to be held _____, 19____, and declare the following to be true:

My name is _____.

I want my name and occupational designation to appear on the ballot as follows _____.

Addresses:

Residence _____

_____

Business _____

_____

Mailing _____

_____

Telephone numbers: Day _____ Evening _____

I meet the statutory and constitutional qualifications for this office (including, but not limited to, citizenship, residency, and party affiliation, if required).

I am at present an incumbent of the following public office (if any) _____.

If nominated, I will accept the nomination and not withdraw.

_____

Signature of candidate

State of California)
County of _____) ss.
)

Subscribed and sworn to before me this _____ day of _____, 19____.

_____

Notary Public (or other official)

Examined and certified by me this _____ day of _____, 19____.

_____

Registrar of Voters – – County Clerk

WARNING: Every person acting on behalf of a candidate is guilty of a misdemeanor who deliberately fails to file at the proper time and in the proper place any declaration of candidacy in his or her possession which is entitled to be filed under the provisions of the Elections Code Section 18202.

(b) No candidate for a judicial office shall be required to state his or her residential address on the declaration of candidacy. However, in cases where the candidate does not state his or her residential address on the declaration of candidacy, the elections official shall verify whether his or her address is within the appropriate political subdivision and add the notation "verified" where appropriate.

SEC. 30. Section 8201 of the Elections Code is amended to read:

8201. (a) A declaration of candidacy for election or a nomination by the Governor, made pursuant to subdivision (d) of Section 16 of Article VI of the California Constitution, shall be filed with the officer charged with the duty of certifying nominations for publication in the official ballot.

(b) No candidate described in subdivision (a) shall be required to state his or her residential address on the declaration of candidacy. However, in cases where the candidate does not state his or her residential address on the declaration of candidacy, the elections official shall verify whether his or her address is within the appropriate political subdivision and add the notation "verified" where appropriate.

SEC. 31. Section 400 of the Family Code is amended to read:

400. Marriage may be solemnized by any of the following who is of the age of 18 years or older:

(a) A priest, minister, or rabbi of any religious denomination.

(b) A judge or retired judge, commissioner of civil marriages or retired commissioner of civil marriages, commissioner or retired commissioner, or assistant commissioner of a court of record or justice court in this state.

(c) A judge or magistrate who has resigned from office.

(d) Any of the following judges or magistrates of the United States:

(1) A justice or retired justice of the United States Supreme Court.

(2) A judge or retired judge of a court of appeals, a district court, or a court created by an act of Congress the judges of which are entitled to hold office during good behavior.

(3) A judge or retired judge of a bankruptcy court or a tax court.

(4) A United States magistrate or retired magistrate.

(e) A legislator or constitutional officer of this state or a member of Congress who represents a district within this state, while that person holds office.

SEC. 31.5. Section 400 of the Family Code is amended to read:

400. Marriage may be solemnized by any of the following who is of the age of 18 years or older:

(a) A priest, minister, or rabbi of any religious denomination.

(b) A judge or retired judge, commissioner of civil marriages or retired commissioner of civil marriages, commissioner or retired commissioner, or assistant commissioner of a court of record in this state.

(c) A judge or magistrate who has resigned from office.

(d) Any of the following judges or magistrates of the United States:

(1) A justice or retired justice of the United States Supreme Court.

(2) A judge or retired judge of a court of appeals, a district court, or a court created by an act of Congress the judges of which are entitled to hold office during good behavior.

(3) A judge or retired judge of a bankruptcy court or a tax court.

(4) A United States magistrate or retired magistrate.

(e) A legislator or constitutional officer of this state or a member of Congress who represents a district within this state, while that person holds office.

SEC. 32. Section 4251 of the Family Code is amended to read:

4251. (a) Commencing July 1, 1997, each superior court shall provide sufficient commissioners to hear Title IV-D child support cases filed by the district attorney. The number of child support commissioners required in each county shall be determined by the Judicial Council as prescribed by paragraph (3) of subdivision (b) of Section 4252. All actions or proceedings filed by the district attorney in a support action or proceeding in which enforcement services are being provided pursuant to Section 11475.1 of the Welfare and Institutions Code, for an order to establish, modify, or enforce child or spousal support, including actions to establish paternity, shall be referred for hearing to a child support commissioner unless a child support commissioner is not available due to exceptional circumstances, as prescribed by the Judicial Council pursuant to paragraph (7) of subdivision (b) of Section 4252. All actions or proceedings filed by a party other than the district attorney to modify or enforce a support order established by the district attorney or for which enforcement services are being provided pursuant to Section 11475.1 of the Welfare and Institutions Code shall be referred for hearing to a child support commissioner unless a child support commissioner is not available due to exceptional circumstances, as prescribed by the Judicial Council pursuant to paragraph (7) of subdivision (b) of Section 4252.

(b) The commissioner shall act as a temporary judge unless an objection is made by the district attorney or any other party. The Judicial Council shall develop a notice which shall be included on all forms and pleadings used to initiate a child support action or proceeding that advises the parties of their right to review by a superior court judge and how to exercise that right. The parties shall also be advised by the court prior to the commencement of the hearing that the matter is being heard by a commissioner who shall act as a temporary judge unless any party objects to the commissioner acting as a temporary judge. While acting as a temporary judge, the commissioner shall receive no compensation other than compensation as a commissioner.

(c) If any party objects to the commissioner acting as a temporary judge, the commissioner may hear the matter and make findings of fact and a recommended order. Within 10 court days, a judge shall ratify the recommended order unless either party objects to the

recommended order, or where a recommended order is in error. In both cases, the judge shall issue a temporary order and schedule a hearing de novo within 10 court days. Any party may waive his or her right to the review hearing at any time.

(d) The commissioner shall, where appropriate, do any of the following:

(1) Review and determine ex parte applications for orders and writs.

(2) Take testimony.

(3) Establish a record, evaluate evidence, and make recommendations or decisions.

(4) Enter judgments or orders based upon voluntary acknowledgments of support liability and parentage and stipulated agreements respecting the amount of child support to be paid.

(5) Enter default orders and judgments pursuant to Section 4253.

(6) In actions in which paternity is at issue, order the mother, child, and alleged father to submit to genetic tests.

(e) The commissioner shall, upon application of any party, join issues concerning custody, visitation, and protective orders in the action filed by the district attorney, subject to Section 11350.1 of the Welfare and Institutions Code. After joinder, the commissioner shall:

(1) Refer the parents for mediation of disputed custody or visitation issues pursuant to Section 3170 of the Family Code.

(2) Accept stipulated agreements concerning custody, visitation, and protective orders and enter orders pursuant to the agreements.

(3) Refer contested issues of custody, visitation, and protective orders to a judge or to another commissioner for hearing. A child support commissioner may hear contested custody, visitation, and restraining order issues only if the court has adopted procedures to segregate the costs of hearing Title IV-D child support issues from the costs of hearing other issues pursuant to applicable federal requirements.

(f) The district attorney shall be served notice by the moving party of any proceeding under this section in which support is at issue. Any order for support that is entered without the district attorney having received proper notice shall be voidable upon the motion of the district attorney.

SEC. 33. 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. 34. Section 68152 of the Government Code is amended to read:

68152. The trial court clerk may destroy court records under Section 68153 after notice of destruction and if there is no request and order for transfer of the records, except the comprehensive historical and sample superior court records preserved for research under the California Rules of Court, when the following times have expired after final disposition of the case in the categories listed:

(a) Adoption: retain permanently.

(b) Change of name: retain permanently.

(c) Other civil actions and proceedings, as follows:

(1) Except as otherwise specified: 10 years.

(2) Where a party appears by a guardian ad litem: 10 years after termination of the court's jurisdiction.

(3) Domestic violence: same period as duration of the restraining or other orders and any renewals, then retain the restraining or other

orders as a judgment; 60 days after expiration of the temporary protective or temporary restraining order.

(4) Eminent domain: retain permanently.

(5) Family law, except as otherwise specified: 30 years.

(6) Harassment: same period as duration of the injunction and any renewals, then retain the injunction as a judgment; 60 days after expiration of the temporary restraining order.

(7) Mental health (Lanterman Developmental Disabilities Services Act and Lanterman-Petris-Short Act): 30 years.

(8) Paternity: retain permanently.

(9) Petition, except as otherwise specified: 10 years.

(10) Real property other than unlawful detainer: retain permanently if the action affects title or an interest in real property.

(11) Small claims: 10 years.

(12) Unlawful detainer: one year if judgment is for possession of the premises; 10 years if judgment is for money.

(d) Notwithstanding subdivision (c), any civil or small claims case in the trial court:

(1) Involuntarily dismissed by the court for delay in prosecution or failure to comply with state or local rules: one year.

(2) Voluntarily dismissed by a party without entry of judgment: one year.

Notation of the dismissal shall be made on the civil index of cases or on a separate dismissal index.

(e) Criminal.

(1) Capital felony (murder with special circumstances where the prosecution seeks the death penalty): retain permanently. If the charge is disposed of by acquittal or a sentence less than death, the case shall be reclassified.

(2) Felony, except as otherwise specified: 75 years.

(3) Felony, except capital felony, with court records from the initial complaint through the preliminary hearing or plea and for which the case file does not include final sentencing or other final disposition of the case because the case was bound over to the superior court: five years.

(4) Misdemeanor, except as otherwise specified: five years.

(5) Misdemeanor alleging a violation of the Vehicle Code, except as otherwise specified: three years.

(6) Misdemeanor alleging a violation of Section 23103, 23152, or 23153 of the Vehicle Code: seven years.

(7) Misdemeanor alleging a violation of Section 14601, 14601.1, 20002, 23104, or 23109 of the Vehicle Code: five years.

(8) Misdemeanor alleging a marijuana violation under subdivision (b), (c), (d), or (e) of Section 11357 of the Health and Safety Code, or subdivision (b) of Section 11360 of the Health and Safety Code in accordance with the procedure set forth in Section 11361.5 of the Health and Safety Code: records shall be destroyed two years from the date of conviction or from the date of arrest if no conviction.

(9) Misdemeanor, infraction, or civil action alleging a violation of the regulation and licensing of dogs under Sections 30951 to 30956, inclusive, of the Food and Agricultural Code or violation of any other local ordinance: three years.

(10) Infraction, except as otherwise specified: three years.

(11) Parking infractions, including alleged violations under the stopping, standing, and parking provisions set forth in Chapter 9 (commencing with Section 22500) of Division 11 of the Vehicle Code: two years.

(f) Habeas corpus: same period as period for retention of the records in the underlying case category.

(g) Juvenile.

(1) Dependent (Section 300 of the Welfare and Institutions Code): upon reaching age 28 or on written request shall be released to the juvenile five years after jurisdiction over the person has terminated under subdivision (a) of Section 826 of the Welfare and Institutions Code. Sealed records shall be destroyed upon court order five years after the records have been sealed pursuant to subdivision (c) of Section 389 of the Welfare and Institutions Code.

(2) Ward (Section 601 of the Welfare and Institutions Code): upon reaching age 21 or on written request shall be released to the juvenile five years after jurisdiction over the person has terminated under subdivision (a) of Section 826 of the Welfare and Institutions Code. Sealed records shall be destroyed upon court order five years after the records have been sealed under subdivision (d) of Section 781 of the Welfare and Institutions Code.

(3) Ward (Section 602 of the Welfare and Institutions Code): upon reaching age 38 under subdivision (a) of Section 826 of the Welfare and Institutions Code. Sealed records shall be destroyed upon court order when the subject of the record reaches the age of 38 under subdivision (d) of Section 781 of the Welfare and Institutions Code.

(4) Traffic and some nontraffic misdemeanors and infractions (Section 601 of the Welfare and Institutions Code): upon reaching age 21 or five years after jurisdiction over the person has terminated under subdivision (c) of Section 826 of the Welfare and Institutions Code. May be microfilmed or photocopied.

(5) Marijuana misdemeanor under subdivision (e) of Section 11357 of the Health and Safety Code in accordance with procedures specified in subdivision (a) of Section 11361.5 of the Health and Safety Code: upon reaching age 18 the records shall be destroyed.

(h) Probate.

(1) Conservatorship: 10 years after decree of termination.

(2) Guardianship: 10 years after the age of 18.

(3) Probate, including probated wills, except as otherwise specified: retain permanently.

(i) Court records of the appellate department of the trial court: five years.

(j) Other records.

(1) Applications in forma pauperis: any time after the disposition of the underlying case.

(2) Arrest warrant: same period as period for retention of the records in the underlying case category.

(3) Bench warrant: same period as period for retention of the records in the underlying case category.

(4) Bond: three years after exoneration and release.

(5) Coroner's inquest report: same period as period for retention of the records in the underlying case category; if no case, then permanent.

(6) Court orders not associated with an underlying case, such as orders for destruction of court records for telephone taps, or to destroy drugs, and other miscellaneous court orders: three years.

(7) Court reporter notes: 10 years after the notes have been taken in criminal and juvenile proceedings and five years after the notes have been taken in all other proceedings, except notes reporting proceedings in capital felony cases (murder with special circumstances where the prosecution seeks the death penalty and the sentence is death), including notes reporting the preliminary hearing, which shall be retained permanently, unless the Supreme Court on request of the court clerk authorizes the destruction.

(8) Electronic recordings made as the official record of the oral proceedings under the California Rules of Court: any time after final disposition of the case in infraction and misdemeanor proceedings, 10 years in all other criminal proceedings, and five years in all other proceedings.

(9) Electronic recordings not made as the official record of the oral proceedings under the California Rules of Court: any time either before or after final disposition of the case.

(10) Index, except as otherwise specified: retain permanently.

(11) Index for cases alleging traffic violations: same period as period for retention of the records in the underlying case category.

(12) Judgments within the jurisdiction of the superior court: retain permanently.

(13) Judgments within the jurisdiction of the municipal and justice court: same period as period for retention of the records in the underlying case category.

(14) Minutes: same period as period for retention of the records in the underlying case category.

(15) Naturalization index: retain permanently.

(16) Ninety-day evaluation (under Section 1203.03 of the Penal Code): same period as period for retention of the records in the underlying case category, or period for completion or termination of probation, whichever is longer.

(17) Register of actions or docket: same period as period for retention of the records in the underlying case category, but in no event less than 10 years for civil and small claims cases.

(18) Search warrant: 10 years, except search warrants issued in connection with a capital felony case defined in paragraph (7), which shall be retained permanently.

(k) Retention of any of the court records under this section shall be extended as follows:

(1) By order of the court on its own motion, or on application of a party or any interested member of the public for good cause shown and on such terms as are just. No fee shall be charged for making the application.

(2) Upon application and order for renewal of the judgment to the extended time for enforcing the judgment.

SEC. 34.5. Section 68152 of the Government Code is amended to read:

68152. The trial court clerk may destroy court records under Section 68153 after notice of destruction and if there is no request and order for transfer of the records, except the comprehensive historical and sample superior court records preserved for research under the California Rules of Court, when the following times have expired after final disposition of the case in the categories listed:

(a) Adoption: retain permanently.

(b) Change of name: retain permanently.

(c) Other civil actions and proceedings, as follows:

(1) Except as otherwise specified: 10 years.

(2) Where a party appears by a guardian ad litem: 10 years after termination of the court's jurisdiction.

(3) Domestic violence: same period as duration of the restraining or other orders and any renewals, then retain the restraining or other orders as a judgment; 60 days after expiration of the temporary protective or temporary restraining order.

(4) Eminent domain: retain permanently.

(5) Family law, except as otherwise specified: 30 years.

(6) Harassment: same period as duration of the injunction and any renewals, then retain the injunction as a judgment; 60 days after expiration of the temporary restraining order.

(7) Mental health (Lanterman Developmental Disabilities Services Act and Lanterman-Petris-Short Act): 30 years.

(8) Paternity: retain permanently.

(9) Petition, except as otherwise specified: 10 years.

(10) Real property other than unlawful detainer: retain permanently if the action affects title or an interest in real property.

(11) Small claims: 10 years.

(12) Unlawful detainer: one year if judgment is for possession of the premises; 10 years if judgment is for money.

(d) Notwithstanding subdivision (c), any civil or small claims case in the trial court:

(1) Involuntarily dismissed by the court for delay in prosecution or failure to comply with state or local rules: one year.

(2) Voluntarily dismissed by a party without entry of judgment: one year.

Notation of the dismissal shall be made on the civil index of cases or on a separate dismissal index.

(e) Criminal.

(1) Capital felony (murder with special circumstances where the prosecution seeks the death penalty): retain permanently. If the charge is disposed of by acquittal or a sentence less than death, the case shall be reclassified.

(2) Felony, except as otherwise specified: 75 years.

(3) Felony, except capital felony, with court records from the initial complaint through the preliminary hearing or plea and for which the case file does not include final sentencing or other final disposition of the case because the case was bound over to the superior court: five years.

(4) Misdemeanor, except as otherwise specified: five years.

(5) Misdemeanor alleging a violation of the Vehicle Code, except as otherwise specified: three years.

(6) Misdemeanor alleging a violation of Section 23103, 23152, or 23153 of the Vehicle Code: seven years.

(7) Misdemeanor alleging a violation of Section 14601, 14601.1, 20002, 23104, or 23109 of the Vehicle Code: five years.

(8) Misdemeanor alleging a marijuana violation under subdivision (b), (c), (d), or (e) of Section 11357 of the Health and Safety Code, or subdivision (b) of Section 11360 of the Health and Safety Code in accordance with the procedure set forth in Section 11361.5 of the Health and Safety Code: records shall be destroyed two years from the date of conviction or from the date of arrest if no conviction.

(9) Misdemeanor, infraction, or civil action alleging a violation of the regulation and licensing of dogs under Sections 30951 to 30956, inclusive, of the Food and Agricultural Code or violation of any other local ordinance: three years.

(10) Infraction, except as otherwise specified: three years.

(11) Parking infractions, including alleged violations under the stopping, standing, and parking provisions set forth in Chapter 9 (commencing with Section 22500) of Division 11 of the Vehicle Code: two years.

(f) Habeas corpus: same period as period for retention of the records in the underlying case category.

(g) Juvenile.

(1) Dependent (Section 300 of the Welfare and Institutions Code): upon reaching age 28 or on written request shall be released to the juvenile five years after jurisdiction over the person has terminated under subdivision (a) of Section 826 of the Welfare and Institutions Code. Sealed records shall be destroyed upon court order five years after the records have been sealed pursuant to subdivision (c) of Section 389 of the Welfare and Institutions Code.

(2) Ward (Section 601 of the Welfare and Institutions Code): upon reaching age 21 or on written request shall be released to the juvenile five years after jurisdiction over the person has terminated under subdivision (a) of Section 826 of the Welfare and Institutions Code. Sealed records shall be destroyed upon court order five years after the records have been sealed under subdivision (d) of Section 781 of the Welfare and Institutions Code.

(3) Ward (Section 602 of the Welfare and Institutions Code): upon reaching age 38 under subdivision (a) of Section 826 of the Welfare and Institutions Code. Sealed records shall be destroyed upon court order when the subject of the record reaches the age of 38 under subdivision (d) of Section 781 of the Welfare and Institutions Code.

(4) Traffic and some nontraffic misdemeanors and infractions (Section 601 of the Welfare and Institutions Code): upon reaching age 21 or five years after jurisdiction over the person has terminated under subdivision (c) of Section 826 of the Welfare and Institutions Code. May be microfilmed or photocopied.

(5) Marijuana misdemeanor under subdivision (e) of Section 11357 of the Health and Safety Code in accordance with procedures specified in subdivision (a) of Section 11361.5 of the Health and Safety Code: upon reaching age 18 the records shall be destroyed.

(h) Probate.

(1) Conservatorship: 10 years after decree of termination.

(2) Guardianship: 10 years after the age of 18.

(3) Probate, including probated wills, except as otherwise specified: retain permanently.

(i) Court records of the appellate division of the superior court: five years.

(j) Other records.

(1) Applications in forma pauperis: any time after the disposition of the underlying case.

(2) Arrest warrant: same period as period for retention of the records in the underlying case category.

(3) Bench warrant: same period as period for retention of the records in the underlying case category.

(4) Bond: three years after exoneration and release.

(5) Coroner's inquest report: same period as period for retention of the records in the underlying case category; if no case, then permanent.

(6) Court orders not associated with an underlying case, such as orders for destruction of court records for telephone taps, or to destroy drugs, and other miscellaneous court orders: three years.

(7) Court reporter notes: 10 years after the notes have been taken in criminal and juvenile proceedings and five years after the notes have been taken in all other proceedings, except notes reporting proceedings in capital felony cases (murder with special circumstances where the prosecution seeks the death penalty and the sentence is death), including notes reporting the preliminary

hearing, which shall be retained permanently, unless the Supreme Court on request of the court clerk authorizes the destruction.

(8) Electronic recordings made as the official record of the oral proceedings under the California Rules of Court: any time after final disposition of the case in infraction and misdemeanor proceedings, 10 years in all other criminal proceedings, and five years in all other proceedings.

(9) Electronic recordings not made as the official record of the oral proceedings under the California Rules of Court: any time either before or after final disposition of the case.

(10) Index, except as otherwise specified: retain permanently.

(11) Index for cases alleging traffic violations: same period as period for retention of the records in the underlying case category.

(12) Judgments within the jurisdiction of the superior court other than in a limited civil case: retain permanently.

(13) Judgments within the jurisdiction of the municipal court or of the superior court in a limited civil case: same period as period for retention of the records in the underlying case category.

(14) Minutes: same period as period for retention of the records in the underlying case category.

(15) Naturalization index: retain permanently.

(16) Ninety-day evaluation (under Section 1203.03 of the Penal Code): same period as period for retention of the records in the underlying case category, or period for completion or termination of probation, whichever is longer.

(17) Register of actions or docket: same period as period for retention of the records in the underlying case category, but in no event less than 10 years for civil and small claims cases.

(18) Search warrant: 10 years, except search warrants issued in connection with a capital felony case defined in paragraph (7), which shall be retained permanently.

(k) Retention of any of the court records under this section shall be extended as follows:

(1) By order of the court on its own motion, or on application of a party or any interested member of the public for good cause shown and on such terms as are just. No fee shall be charged for making the application.

(2) Upon application and order for renewal of the judgment to the extended time for enforcing the judgment.

SEC. 35. Section 68511.3 of the Government Code is amended to read:

68511.3. (a) The Judicial Council shall formulate and adopt uniform forms and rules of court for litigants proceeding in forma pauperis. These rules shall provide for all of the following:

(1) Standard procedures for considering and determining applications for permission to proceed in forma pauperis, including, in the event of a denial of such permission, a written statement

detailing the reasons for denial and an evidentiary hearing where there is a substantial evidentiary conflict.

(2) Standard procedures to toll relevant time limitations when a pleading or other paper accompanied by such an application is timely lodged with the court and delay is caused due to the processing of the application to proceed in forma pauperis.

(3) Proceeding in forma pauperis at every stage of the proceedings at both the appellate and trial levels of the court system.

(4) The confidentiality of the financial information provided to the court by these litigants.

(5) That the court may authorize the clerk of the court, county financial officer, or other appropriate county officer to make reasonable efforts to verify the litigant's financial condition without compromising the confidentiality of the application.

(6) That permission to proceed in forma pauperis be granted to all of the following:

(A) Litigants who are receiving benefits pursuant to the Supplemental Security Income (SSI) and State Supplemental Payments (SSP) programs (Sections 12200 to 12205, inclusive, of the Welfare and Institutions Code), the California Work Opportunity and Responsibility to Kids Act (CalWORKs) program (Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code), the Food Stamp program (7 U.S.C. Sec. 2011 et seq.), or Section 17000 of the Welfare and Institutions Code.

(B) Litigants whose monthly income is 125 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.

(C) Other persons when in the court's discretion, this permission is appropriate because the litigant is unable to proceed without using money which is necessary for the use of the litigant or the litigant's family to provide for the common necessaries of life.

(b) (1) Litigants who apply for permission to proceed in forma pauperis pursuant to subparagraph (A) of paragraph (6) of subdivision (a) shall declare under penalty of perjury that they are receiving such benefits and may voluntarily provide the court with their social security number to permit the court to verify the applicant's receipt of public assistance. The court may require any applicant, except a defendant in an unlawful detainer action, who chooses not to disclose his or her social security number for verification purposes to attach to the application documentation of benefits to support the claim and all other financial information on a form promulgated by the Judicial Council for this purpose.

(2) Litigants who apply for permission to proceed in forma pauperis pursuant to subparagraph (B) or (C) of paragraph (6) of subdivision (a) shall file a financial statement under oath on a form

promulgated by, and pursuant to rules adopted by, the Judicial Council.

(c) The forms and rules adopted by the Judicial Council shall provide for the disclosure of the following information about the litigant:

(1) Current street address.

(2) Date of birth.

(3) Occupation and employer.

(4) Monthly income and expenses.

(5) Address and value of any real property owned directly or beneficially.

(6) Personal property with a value that exceeds five hundred dollars ($500).

The information furnished by the litigant shall be used by the court in determining his or her ability to pay all or a portion of the fees and costs.

(d) At any time after the court has granted a litigant permission to proceed in forma pauperis and prior to final disposition of the case, the clerk of the court, county financial officer, or other appropriate county officer may notify the court of any changed financial circumstances which may enable the litigant to pay all or a portion of the fees and costs which had been waived. The court may authorize the clerk of the court, county financial officer, or other appropriate county officer to require the litigant to appear before and be examined by the person authorized to ascertain the validity of their indigent status. However, no litigant shall be required to appear more than once in any four-month period. A litigant proceeding in forma pauperis shall notify the court within five days of any settlement or monetary consideration received in settlement of this litigation and of any other change in financial circumstances that affects the litigant's ability to pay court fees and costs. After the litigant either (1) appears before and is examined by the person authorized to ascertain the validity of his or her indigent status or (2) notifies the court of a change in financial circumstances, the court may then order the litigant to pay to the county such sum and in such manner as the court believes is compatible with the litigant's financial ability.

In any action or proceeding in which the litigant whose fees and costs have been waived would have been entitled to recover those fees and costs from another party to the action or proceeding had they been paid, the court may assess the amount of the waived fees and costs against the other party and order the other party to pay that sum to the county or to the clerk and serving and levying officers respectively, or the court may order the amount of the waived fees and costs added to the judgment and so identified by the clerk.

Execution may be issued on any order provided for in this subdivision in the same manner as on a judgment in a civil action. When an amount equal to the sum due and payable to the clerk has

been collected upon the judgment, these amounts shall be remitted to the clerk within 30 days. Thereafter, when an amount equal to the sum due to the serving and levying officers has been collected upon the judgment, these amounts shall be due and payable to those officers and shall be remitted within 30 days. If the remittance is not received by the clerk within 30 days or there is a filing of a partial satisfaction of judgment in an amount at least equal to the fees and costs payable to the clerk or a satisfaction of judgment has been filed, notwithstanding any other provision of law, the court may issue an abstract of judgment, writ of execution, or both for recovery of those sums, plus the fees for issuance and execution and an additional fee for administering this section. The county board of supervisors shall establish a fee, not to exceed actual costs of administering this subdivision and in no case exceeding twenty-five dollars ($25), which shall be added to the writ of execution.

(e) Notwithstanding subdivision (a), a person who is sentenced to imprisonment in a state prison or confined in a county jail and, during the period of imprisonment or confinement, files a civil action or notice of appeal of a civil action in forma pauperis shall be required to pay the full amount of the filing fee to the extent provided in this subdivision.

(1) In addition to the form required by this section for filing in forma pauperis, an inmate shall file a copy of a statement of account for any sums due to the inmate for the six-month period immediately preceding the filing of the civil action or notice of appeal of a civil action. This copy shall be certified by the appropriate official of the Department of Corrections or a county jail.

(2) Upon filing the civil action or notice of appeal of a civil action, the court shall assess, and when funds exist, collect, as a partial payment of any required court fees, an initial partial filing fee of 20 percent of the greater of one of the following:

(A) The average monthly deposits to the inmate's account.

(B) The average monthly balance in the inmate's account for the six-month period immediately preceding the filing of the civil action or notice of appeal.

(3) After payment of the initial partial filing fee, the inmate shall be required to make monthly payments of 20 percent of the preceding month's income credited to the inmate's account. The Department of Corrections shall forward payments from this account to the clerk of the court each time the amount in the account exceeds ten dollars ($10) until the filing fees are paid.

(4) In no event shall the filing fee collected pursuant to this subdivision exceed the amount of fees permitted by law for the commencement of a civil action or an appeal of a civil action.

(5) In no event shall an inmate be prohibited from bringing a civil action or appeal of a civil action solely because the inmate has no assets and no means to pay the initial partial filing fee.

SEC. 36. 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. 37. Section 76219 of the Government Code is amended to read:

76219. (a) The Courthouse Construction Fund established in Los Angeles County pursuant to Section 76100 shall be known as the Robbins Courthouse Construction Fund.

(b) All courtroom construction in the County of Los Angeles which utilizes moneys from the Robbins Courthouse Construction Fund or moneys borrowed and owed against the Robbins Courthouse Construction Fund shall be within the boundaries of the San Fernando Valley Statistical Area and the Los Cerritos Municipal Court District, until the time that the County of Los Angeles has spent a total of at least forty-three million dollars ($43,000,000) on courthouse construction within the San Fernando Valley Statistical Area and at least eight million dollars ($8,000,000) within the Los Cerritos Municipal Court District for the Bellflower Courthouse.

(c) All courtroom construction in the County of Los Angeles which utilizes moneys from the Robbins Courthouse Construction Fund or moneys borrowed against the Robbins Courthouse Construction Fund shall be within the boundaries of the San Fernando Valley Statistical Area, within the boundaries of the Los Cerritos Municipal Court District, within the boundaries of the East Los Angeles Municipal Court District, within the Downey Municipal Court District, within the community of Hollywood, or within the West Los Angeles Branch of the Los Angeles Municipal Court District, until the time that the County of Los Angeles has fulfilled the requirements of subdivision (b) and has additionally spent at least sixteen million five hundred thousand dollars ($16,500,000) on courthouse construction within the East Los Angeles Municipal Court District, has spent at least ten million dollars ($10,000,000) on courthouse construction within the Downey Municipal Court District, has commenced construction on a courthouse with at least six courtrooms in the West San Fernando Valley, has commenced construction on a courthouse with at least two courtrooms in the community of Hollywood, and has commenced construction on a courthouse for the West Los Angeles Branch of the Los Angeles Municipal Court District.

(d) All courtroom construction in the County of Los Angeles which utilizes moneys from the Robbins Courthouse Construction Fund or moneys borrowed against the Robbins Courthouse Construction Fund shall be within the boundaries of the San Fernando Valley Statistical Area, within the boundaries of the Los Cerritos Municipal Court District, within the boundaries of the East Los Angeles Municipal Court District, within the Downey Municipal Court District, within the community of Hollywood, within the West Los Angeles Branch of the Los Angeles Municipal Court District, within the Pasadena Judicial District, within the Southeast Municipal Court District, within the South Bay Judicial District, within the Santa Monica Judicial District, within the Antelope Valley Judicial District, or within the Long Beach Judicial District until the time that the County of Los Angeles has fulfilled the requirements of subdivisions (b) and (c), and has commenced construction of new facilities or the expansion of existing facilities for the municipal courts in the Pasadena Judicial District, the north and south branches of the Southeast Municipal Court District, and the South Bay Judicial District, has commenced construction on a courthouse for the superior court with at least 18 courtrooms in the North Hollywood Redevelopment Project Area of the City of Los Angeles or immediately adjacent thereto, and has commenced construction of new facilities for the superior and municipal courts in the Santa Monica Judicial District, the Antelope Valley Judicial District, and the Long Beach Judicial District.

(e) For purposes of this section, the San Fernando Valley Statistical Area includes all land within the San Fernando Valley

Statistical Area (as defined in subdivision (e) of Section 11093) as well as the City of San Fernando, the City of Hidden Hills, and the unincorporated areas of Los Angeles County located west of the City of Los Angeles, east and south of the Ventura County line, and north of a line extended westerly from the southern boundary of the San Fernando Valley Statistical Area (as defined in subdivision (c) of Section 11093).

(f) The moneys of the Robbins Courthouse Construction Fund together with any interest earned thereon shall be payable only for courtroom construction and land acquisition as authorized in subdivision (b) and, after the requirement of subdivision (b) has been met, shall be payable only for courtroom construction and land acquisition as authorized in subdivision (c) and, after the requirements of subdivisions (b) and (c) have been met, shall be payable only for courtroom construction and land acquisition as authorized in subdivision (d).

(g) Deposits into the fund shall continue through and including either (1) the 25th year after the initial calendar year in which the surcharge is seleected or (2) whatever period of time is necessary to repay any borrowings made by the county to pay for construction provided for in this section, whichever time is longer.

(h) The resolution adopted by the Board of Supervisors of the County of Los Angeles on September 2, 1980, stating that the provisions of Chapter 578 of the Statutes of 1980 are necessary to the establishment of adequate courtroom facilities in the County of Los Angeles shall be deemed a resolution stating that the provisions of this section are necessary to the establishment of adequate courtroom facilities in the county, and shall satisfy the requirements of this section.

SEC. 38. Section 33502 of the Health and Safety Code is amended to read:

33502. The judgment shall determine the validity or invalidity, respectively, of the matters specified in Section 33501. The judgment shall be subject to being reopened under Section 473 or Section 473.5 of the Code of Civil Procedure or otherwise only within 90 days after the entry of the judgment and petitioner and any person who has appeared in the special proceeding shall have the right to move for a new trial under proper circumstances and upon appropriate grounds and to appeal from the judgment.

SEC. 39. Section 115800.1 of the Health and Safety Code is amended to read:

115800.1. (a) In-line skating by an adult shall be deemed a hazardous recreational activity within the meaning of Section 831.7 of the Government Code if all of the following conditions are met:

(1) The local public agency has, by legislative action, designated specific public property as a recreational area, boardwalk, or park in which in-line skating is permitted.

(2) The designated area, boardwalk, or park is adequately posted with notices advising the public that in-line skating in the designated area by adults is deemed to be a hazardous recreational activity and that the public entity may not be liable for injuries incurred by persons participating in the hazardous recreational activity in the designated area, boardwalk, or park.

(b) Nothing in Section 831.7 of the Government Code or this section shall be deemed to limit the duty of a public entity to maintain public property or premises in a safe manner.

(c) The appropriate local public agency shall maintain a record of all known or reported injuries incurred by an in-line skater on designated public property and other public property. The local public agency shall also maintain a record of all claims, paid and not paid, including any lawsuits and their results, arising from those incidents that were filed against the public agency. Beginning in 1999, copies of these records shall be filed annually, no later than January 30 each year, with the Judicial Council, which shall submit a report to the Legislature on or before March 31, 2000, on the incidences of injuries incurred, claims asserted, and the results of any lawsuit filed, by persons injured while in-line skating on designated public property and other public property.

(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. 40. Section 1368 of the Penal Code is amended to read:

1368. (a) If, during the pendency of an action and prior to judgment, a doubt arises in the mind of the judge as to the mental competence of the defendant, he or she shall state that doubt in the record and inquire of the attorney for the defendant whether, in the opinion of the attorney, the defendant is mentally competent. If the defendant is not represented by counsel, the court shall appoint counsel. At the request of the defendant or his or her counsel or upon its own motion, the court shall recess the proceedings for as long as may be reasonably necessary to permit counsel to confer with the defendant and to form an opinion as to the mental competence of the defendant at that point in time.

(b) If counsel informs the court that he or she believes the defendant is or may be mentally incompetent, the court shall order that the question of the defendant's mental competence is to be determined in a hearing which is held pursuant to Sections 1368.1 and 1369. If counsel informs the court that he or she believes the defendant is mentally competent, the court may nevertheless order a hearing. Any hearing shall be held in the superior court.

(c) Except as provided in Section 1368.1, when an order for a hearing into the present mental competence of the defendant has been issued, all proceedings in the criminal prosecution shall be suspended until the question of the present mental competence of the defendant has been determined.

If a jury has been impaneled and sworn to try the defendant, the jury shall be discharged only if it appears to the court that undue hardship to the jurors would result if the jury is retained on call.

If the defendant is declared mentally incompetent, the jury shall be discharged.

SEC. 41. Section 11165.8 of the Penal Code is amended to read:

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

(a) A physician and surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, licensed nurse, dental hygienist, optometrist, marriage, family and child counselor, clinical social worker, or any other person who is currently licensed under Division 2 (commencing with Section 500) of the Business and Professions Code.

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

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

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

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

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

(g) A coroner.

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

SEC. 42. Section 5 of Chapter 1125 of the Statutes of 1990, as amended by Section 9 of Chapter 591 of the Statutes of 1995, is amended to read:

Sec. 5. Sections 1.5, 2.5, 3.5, and 4.5 of this act shall become operative on January 1, 2002.

SEC. 43. Section 11.5 of this bill incorporates amendments to Section 77 of the Code of Civil Procedure proposed by both this bill and SB 2139. 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 77 of the Code of Civil Procedure, and (3) this bill is enacted after SB 2139, in which case Section 77 of the Code of Civil Procedure as amended by SB 2139, shall remain operative only until the operative date of this bill, at which time Section 11.5 of this bill shall become operative, and Section 11 of this bill shall not become operative.

SEC. 44. Section 13.5 of this bill incorporates amendments to Section 200 of the Code of Civil Procedure proposed by both this bill and SB 2139. 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 200 of the Code of Civil Procedure, and (3) this bill is enacted after SB 2139, in which case Section 200 of the Code of Civil Procedure as amended by SB 2139, shall remain operative only until the operative date of this bill, at which time Section 13.5 of this bill shall become operative, and Section 13 of this bill shall not become operative.

SEC. 45. (a) Section 22.1 of this bill incorporates amendments to Section 2025 of the Code of Civil Procedure proposed by both this bill and SB 2145. 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 2025 of the Code of Civil Procedure, and (3) AB 2150 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 2145, in which case Sections 22, 22.2, and 22.3 of this bill shall not become operative.

(b) Section 22.2 of this bill incorporates amendments to Section 2025 of the Code of Civil Procedure proposed by both this bill and AB 2150. 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 2025 of the Code of Civil Procedure, (3) SB 2145 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 2150 in which case Sections 22, 22.1, and 22.3 of this bill shall not become operative.

(c) Section 22.3 of this bill incorporates amendments to Section 2025 of the Code of Civil Procedure proposed by this bill, SB 2145, and AB 2150. 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 2025 of the Code of Civil Procedure, and (3) this bill is enacted after SB 2145 and AB 2150, in which case Sections 22, 22.1, and 22.2 of this bill shall not become operative.

SEC. 46. Section 31.5 of this bill incorporates amendments to Section 400 of the Family Code proposed by both this bill and SB 2139. 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 400 of the Family Code, and (3) this bill is enacted after SB 2139, in which case Section 400 of the Family Code as amended by SB 2139, shall remain operative only until the operative date of this bill, at which time Section 31.5 of this bill shall become operative, and Section 31 of this bill shall not become operative.

SEC. 47. Section 34.5 of this bill incorporates amendments to Section 68152 of the Government Code proposed by both this bill and SB 2139. 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 68152 of the Government Code, and (3) this bill is enacted after SB 2139, in which case Section 68152 of the Government Code as amended by SB 2139, shall remain operative only until the operative date of this bill, at which time Section 34.5 of this bill shall

become operative, and Section 34 of this bill shall not become operative.

SEC. 48. 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 933

An act to amend Sections 186.21, 422.75, 11410, 13023, and 13519.6 of, and to add Section 422.76 to, the Penal Code, relating to gender.

[Approved by Governor September 28, 1998. Filed with Secretary of State September 28, 1998.]

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

SECTION 1. Section 186.21 of the Penal Code is amended to read:

186.21. The Legislature hereby finds and declares that it is the right of every person, regardless of race, color, creed, religion, national origin, gender, age, sexual orientation, or handicap, to be secure and protected from fear, intimidation, and physical harm caused by the activities of violent groups and individuals. It is not the intent of this chapter to interfere with the exercise of the constitutionally protected rights of freedom of expression and association. The Legislature hereby recognizes the constitutional right of every citizen to harbor and express beliefs on any lawful subject whatsoever, to lawfully associate with others who share similar beliefs, to petition lawfully constituted authority for a redress of perceived grievances, and to participate in the electoral process.

The Legislature, however, further finds that the State of California is in a state of crisis which has been caused by violent street gangs whose members threaten, terrorize, and commit a multitude of crimes against the peaceful citizens of their neighborhoods. These activities, both individually and collectively, present a clear and present danger to public order and safety and are not constitutionally protected. The Legislature finds that there are nearly 600 criminal street gangs operating in California, and that the number of gang-related murders is increasing. The Legislature also finds that in

Los Angeles County alone there were 328 gang-related murders in 1986, and that gang homicides in 1987 have increased 80 percent over 1986. It is the intent of the Legislature in enacting this chapter to seek the eradication of criminal activity by street gangs by focusing upon patterns of criminal gang activity and upon the organized nature of street gangs, which together, are the chief source of terror created by street gangs. The Legislature further finds that an effective means of punishing and deterring the criminal activities of street gangs is through forfeiture of the profits, proceeds, and instrumentalities acquired, accumulated, or used by street gangs.

SEC. 2. Section 422.75 of the Penal Code is amended to read:

422.75. (a) Except in the case of a person punished under Section 422.7, a person who commits a felony or attempts to commit a felony because of the victim's race, color, religion, nationality, country of origin, ancestry, disability, gender, or sexual orientation, or because he or she perceives that the victim has one or more of those characteristics, shall receive an additional term of one, two, or three years in the state prison, at the court's discretion.

(b) Except in the case of a person punished under Section 422.7 or subdivision (a) of this section, any person who commits a felony or attempts to commit a felony against the property of a public agency or private institution, including a school, educational facility, library or community center, meeting hall, place of worship, or offices of an advocacy group, or the grounds adjacent to, owned, or rented by the public agency or private institution, because the property of the public agency or private institution is identified or associated with a person or group of an identifiable race, color, religion, nationality, country of origin, ancestry, gender, disability, or sexual orientation, shall receive an additional term of one, two, or three years in the state prison, at the court's discretion.

(c) Except in the case of a person punished under Section 422.7 or subdivision (a) or (b) of this section, any person who commits a felony, or attempts to commit a felony, because of the victim's race, color, religion, nationality, country of origin, ancestry, gender, disability, or sexual orientation, or because he or she perceives that the victim has one or more of those characteristics, and who voluntarily acted in concert with another person, either personally or by aiding and abetting another person, shall receive an additional two, three, or four years in the state prison, at the court's discretion.

(d) For the purpose of imposing an additional term under subdivision (a) or (c), it shall be a factor in aggravation that the defendant personally used a firearm in the commission of the offense. Nothing in this subdivision shall preclude a court from also imposing a sentence enhancement pursuant to Section 12022.5 or 12022.55, or any other law.

(e) A person who is punished pursuant to this section also shall receive an additional term of one year in the state prison for each prior felony conviction on charges brought and tried separately in

which it was found by the trier of fact or admitted by the defendant that the crime was committed because of the victim's race, color, religion, nationality, country of origin, ancestry, disability, gender, or sexual orientation, or that the crime was committed because the defendant perceived that the victim had one or more of those characteristics. This additional term shall only apply where a sentence enhancement is not imposed pursuant to Section 667 or 667.5.

(f) Any additional term authorized by this section shall not be imposed unless the allegation is charged in the accusatory pleading and admitted by the defendant or found to be true by the trier of fact.

(g) Any additional term imposed pursuant to this section shall be in addition to any other punishment provided by law.

(h) Notwithstanding any other law, the court may strike any additional term imposed by this section if the court determines that there are mitigating circumstances and states on the record the reasons for striking the additional punishment.

(i) (1) "Because of" means that the bias motivation must be a cause in fact of the offense, whether or not other causes also exist. When multiple concurrent motives exist, the prohibited bias must be a substantial factor in bringing about the particular result.

(2) This subdivision does not constitute a change in, but is declaratory of, existing law under In Re M.S. (1995) 10 Cal. 4th 698 and People v. Superior Court (Aishman) (1995) 10 Cal. 4th 735.

SEC. 2.5. Section 422.75 of the Penal Code is amended to read:

422.75. (a) Except in the case of a person punished under Section 422.7, a person who commits a felony or attempts to commit a felony because of the victim's race, color, religion, nationality, country of origin, ancestry, disability, gender, or sexual orientation, or because he or she perceives that the victim has one or more of those characteristics, shall receive an additional term of one, two, or three years in the state prison, at the court's discretion.

(b) Except in the case of a person punished under Section 422.7 or subdivision (a) of this section, any person who commits a felony or attempts to commit a felony against the property of a public agency or private institution, including a school, educational facility, library or community center, meeting hall, place of worship, or offices of an advocacy group, or the grounds adjacent to, owned, or rented by the public agency or private institution, because the property of the public agency or private institution is identified or associated with a person or group of an identifiable race, color, religion, nationality, country of origin, ancestry, gender, disability, or sexual orientation, shall receive an additional term of one, two, or three years in the state prison, at the court's discretion.

(c) Except in the case of a person punished under Section 422.7 or subdivision (a) or (b) of this section, any person who commits a felony, or attempts to commit a felony, because of the victim's race, color, religion, nationality, country of origin, ancestry, gender,

disability, or sexual orientation, or because he or she perceives that the victim has one or more of those characteristics, and who voluntarily acted in concert with another person, either personally or by aiding and abetting another person, shall receive an additional two, three, or four years in the state prison, at the court's discretion.

(d) For the purpose of imposing an additional term under subdivision (a) or (c), it shall be a factor in aggravation that the defendant personally used a firearm in the commission of the offense. Nothing in this subdivision shall preclude a court from also imposing a sentence enhancement pursuant to Section 12022.5, 12022.53, or 12022.55, or any other law.

(e) A person who is punished pursuant to this section also shall receive an additional term of one year in the state prison for each prior felony conviction on charges brought and tried separately in which it was found by the trier of fact or admitted by the defendant that the crime was committed because of the victim's race, color, religion, nationality, country of origin, ancestry, disability, gender, or sexual orientation, or that the crime was committed because the defendant perceived that the victim had one or more of those characteristics. This additional term shall only apply where a sentence enhancement is not imposed pursuant to Section 667 or 667.5.

(f) Any additional term authorized by this section shall not be imposed unless the allegation is charged in the accusatory pleading and admitted by the defendant or found to be true by the trier of fact.

(g) Any additional term imposed pursuant to this section shall be in addition to any other punishment provided by law.

(h) Notwithstanding any other provision of law, the court may strike any additional term imposed by this section if the court determines that there are mitigating circumstances and states on the record the reasons for striking the additional punishment.

(i) (1) "Because of" means that the bias motivation must be a cause in fact of the offense, whether or not other causes also exist. When multiple concurrent motives exist, the prohibited bias must be a substantial factor in bringing about the particular result.

(2) This subdivision does not constitute a change in, but is declaratory of, existing law under In Re M.S. (1995) 10 Cal. 4th 698 and People v. Superior Court (Aishman)(1995) 10 Cal. 4th 735.

SEC. 3. Section 422.76 is added to the Penal Code, to read:

422.76. For purposes of Section 186.21, subdivisions (a) and (b) of Section 422.6, Section 422.7, subdivisions (a), (b), (c), and (e) of Section 422.75, Sections 1170.75 and 11410, paragraph (9) of subdivision (b) of Section 11413, Section 13023, subdivision (c) of Section 13519.4, and subdivision (a) of Section 13519.6, "gender" means the victim's actual sex or the defendant's perception of the victim's sex, and includes the defendant's perception of the victim's identity, appearance, or behavior, whether or not that identity,

appearance, or behavior is different from that traditionally associated with the victim's sex at birth.

SEC. 3.1. Section 422.76 is added to the Penal Code, to read:

422.76. For purposes of Sections 186.21, 190.03, subdivisions (a) and (b) of Section 422.6, Section 422.7, subdivisions (a), (b), (c), and (e) of Section 422.75, Sections 1170.75 and 11410, paragraph (9) of subdivision (b) of Section 11413, Section 13023, subdivision (c) of Section 13519.4, and subdivision (a) of Section 13519.6, "gender" means the victim's actual sex or the defendant's perception of the victim's sex, and includes the defendant's perception of the victim's identity, appearance, or behavior, whether or not that identity, appearance, or behavior is different from that traditionally associated with the victim's sex at birth.

SEC. 4. Section 11410 of the Penal Code is amended to read:

11410. The Legislature finds and declares that it is the right of every person regardless of race, color, creed, religion, gender, or national origin, to be secure and protected from fear, intimidation, and physical harm caused by the activities of violent groups and individuals. It is not the intent of this chapter to interfere with the exercise of rights protected by the Constitution of the United States. The Legislature recognizes the constitutional right of every citizen to harbor and express beliefs on any subject whatsoever and to associate with others who share similar beliefs. The Legislature further finds however, that the advocacy of unlawful violent acts by groups against other persons or groups under circumstances where death or great bodily injury is likely to result is not constitutionally protected, poses a threat to public order and safety and should be subject to criminal and civil sanctions.

SEC. 5. Section 13023 of the Penal Code is amended to read:

13023. Commencing July 1, 1990, subject to the availability of adequate funding, the Attorney General shall direct local law enforcement agencies to report to the Department of Justice, in a manner to be prescribed by the Attorney General, any information that may be required relative to any criminal acts or attempted criminal acts to cause physical injury, emotional suffering, or property damage where there is a reasonable cause to believe that the crime was motivated, in whole or in part, by the victim's race, ethnicity, religion, gender, sexual orientation, or physical or mental disability. On or before July 1, 1992, and every July 1 thereafter, the Department of Justice shall submit a report to the Legislature analyzing the results of the information obtained from local law enforcement agencies pursuant to this section.

SEC. 6. Section 13519.6 of the Penal Code is amended to read:

13519.6. (a) The commission shall, on or before December 31, 1993, develop guidelines and a course of instruction and training for law enforcement officers who are employed as peace officers, or who are not yet employed as a peace officer but are enrolled in a training academy for law enforcement officers, addressing hate crimes. "Hate

crimes," for purposes of this section, means any act of intimidation, harassment, physical force, or the threat of physical force directed against any person, or family, or their property or advocate, motivated either in whole or in part by the hostility to the real or perceived ethnic background, national origin, religious belief, gender, age, disability, or sexual orientation, with the intention of causing fear and intimidation.

(b) The course shall make maximum use of audio and video communication and other simulation methods and shall include instruction in each of the following procedures and techniques:

(1) Indicators of hate crimes.

(2) The impact of these crimes on the victim, the victim's family, and the community.

(3) Knowledge of the laws dealing with hate crimes and the legal rights of, and the remedies available to, victims of hate crimes.

(4) Law enforcement procedures, reporting, and documentation of hate crimes.

(5) Techniques and methods to handle incidents of hate crimes in a noncombative manner.

(c) The guidelines developed by the commission shall incorporate the procedures and techniques specified in subdivision (b).

(d) The course of training leading to the basic certificate issued by the commission shall, not later than July 1, 1994, include the course of instruction described in subdivision (a).

(e) As used in this section, "peace officer" means any person designated as a peace officer by Section 830.1 or 830.2.

SEC. 7. Section 422.76 of the Penal Code as added by Section 3 of this act does not constitute a change in, but is declaratory of, existing law.

SEC. 8. Section 2.5 of this bill incorporates amendments to Section 422.75 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 422.75 of the Penal Code, and (3) this bill is enacted after SB 2168, in which case Section 422.75 of the Penal Code as amended by SB 2168, shall remain operative only until the operative date of this bill, at which time Section 2.5 of this bill shall become operative, and Section 2 of this bill shall not become operative.

SEC. 9. Section 3.1 of this bill shall become operative only if (1) both this bill and AB 2324 are enacted and become effective on or before January 1, 1999, and (2) AB 2324 adds Section 190.03 to the Penal Code, in which case Section 3 of this bill shall not become operative.

SEC. 10. 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 934

An act to amend Section 368 of the Penal Code, relating to elder abuse.

[Approved by Governor September 28, 1998. Filed with Secretary of State September 28, 1998.]

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

SECTION 1. Section 368 of the Penal Code is amended to read:

368. (a) (1) Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult, with knowledge that he or she is an elder or a dependent adult, to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured, or willfully causes or permits the elder or dependent adult to be placed in a situation in which his or her person or health is endangered, is punishable by imprisonment in the county jail not exceeding one year, or in the state prison for two, three, or four years.

(2) If in the commission of an offense described in paragraph (1), the victim suffers great bodily injury, as defined in subdivision (e) of Section 12022.7, the defendant shall receive an additional term of three years in the state prison, except that if the victim is 70 years of age or older the additional term shall be five years.

(3) If in the commission of an offense described in paragraph (1), the defendant proximately causes the death of the victim, the defendant shall receive an additional term of five years in the state

prison, except that if the victim is 70 years of age or older the additional term shall be seven years.

(b) Any person who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult, with knowledge that he or she is an elder or a dependent adult, to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured or willfully causes or permits the elder or dependent adult to be placed in a situation in which his or her person or health may be endangered, is guilty of a misdemeanor.

(c) Any caretaker of an elder or a dependent adult who violates any provision of law proscribing theft or embezzlement, with respect to the property of that elder or dependent adult, is punishable by imprisonment in a county jail not exceeding one year, or in the state prison for two, three, or four years when the money, labor, or real or personal property taken is of a value exceeding four hundred dollars ($400), and by a fine not exceeding one thousand dollars ($1,000), by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, when the money, labor, or real or personal property taken is of a value not exceeding four hundred dollars ($400).

(d) Any person who is not a caretaker who violates any provision of law proscribing theft or embezzlement, with respect to the property of an elder or dependent adult, and who knows or reasonably should know that the victim is an elder or dependent adult, is punishable by imprisonment in a county jail not exceeding one year, or in the state prison for two, three, or four years, when the money, labor, or real or personal property taken is of a value exceeding four hundred dollars ($400); and by a fine not exceeding one thousand dollars ($1,000), by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, when the money, labor, or real or personal property taken is of a value not exceeding four hundred dollars ($400).

(e) As used in this section, "elder" means any person who is 65 years of age or older.

(f) As used in this section, "dependent adult" means any person who is between the ages of 18 and 64, who has physical or mental limitations which restrict his or her ability to carry out normal activities or to protect his or her rights, including, but not limited to, persons who have physical or developmental disabilities or whose physical or mental abilities have diminished because of age. "Dependent adult" includes any person between the ages of 18 and 64 who is admitted as an inpatient to a 24-hour health facility, as defined in Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code.

(g) As used in this section, "caretaker" means any person who has the care, custody, or control of or who stands in a position of trust with, an elder or a dependent adult.

(h) Nothing in this section shall preclude prosecution under both this section and Section 187 or 12022.7 or any other provision of law. However, a person shall not receive an additional term of imprisonment under both paragraphs (2) and (3) of subdivision (a) for any single offense, nor shall a person receive an additional term of imprisonment under both Section 12022.7 and paragraph (2) or (3) of subdivision (a) for any single offense.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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

CHAPTER 935

An act to amend Sections 237 and 368 of the Penal Code, to amend Section 2583 of, to amend the heading of Part 7 (commencing with Section 250) of Division 2 of, and to add Section 259 to, the Probate Code, relating to elder abuse.

[Approved by Governor September 28, 1998. Filed with Secretary of State September 28, 1998.]

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

SECTION 1. Section 237 of the Penal Code is amended to read:

237. (a) False imprisonment is punishable by a fine not exceeding one thousand dollars ($1,000), or by imprisonment in the county jail for not more than one year, or by both that fine and imprisonment. If the false imprisonment be effected by violence, menace, fraud, or deceit, it shall be punishable by imprisonment in the state prison.

(b) False imprisonment of an elder or dependent adult by use of violence, menace, fraud, or deceit shall be punishable as described in subdivision (e) of Section 368.

SEC. 2. Section 368 of the Penal Code is amended to read:

368. (a) The Legislature finds and declares that crimes against elders and dependent adults are deserving of special consideration and protection, not unlike the special protections provided for minor children, because elders and dependent adults may be confused, on various medications, mentally or physically impaired, or incompetent, and therefore less able to protect themselves, to understand or report criminal conduct, or to testify in court proceedings on their own behalf.

(b) (1) Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult, with knowledge that he or she is an elder or a dependent adult, to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured, or willfully causes or permits the elder or dependent adult to be placed in a situation in which his or her person or health is endangered, is punishable by imprisonment in the county jail not exceeding one year, or in the state prison for two, three, or four years.

(2) If in the commission of an offense described in paragraph (1), the victim suffers great bodily injury, as defined in subdivision (e) of Section 12022.7, the defendant shall receive an additional term of three years in the state prison, except that if the victim is 70 years of age or older the additional term shall be five years.

(3) If in the commission of an offense described in paragraph (1), the defendant proximately causes the death of the victim, the defendant shall receive an additional term of five years in the state prison, except that if the victim is 70 years of age or older the additional term shall be seven years.

(c) Any person who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult, with knowledge that he or she is an elder or a dependent adult, to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured or willfully causes or permits the elder or dependent adult to be placed in a situation in which his or her person or health may be endangered, is guilty of a misdemeanor.

(d) Any caretaker of an elder or a dependent adult who violates any provision of law proscribing theft or embezzlement, with respect to the property of that elder or dependent adult, is punishable by imprisonment in a county jail not exceeding one year, or in the state prison for two, three, or four years when the money, labor, or real or personal property taken is of a value exceeding four hundred dollars ($400), and by a fine not exceeding one thousand dollars ($1,000), by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, when the money, labor, or real or personal

property taken is of a value not exceeding four hundred dollars ($400).

(e) Any person who commits the false imprisonment of an elder or dependent adult by the use of violence, menace, fraud, or deceit is punishable by imprisonment in the state prison for two, three, or four years.

(f) As used in this section, "elder" means any person who is 65 years of age or older.

(g) As used in this section, "dependent adult" means any person who is between the ages of 18 and 64, who has physical or mental limitations which restrict his or her ability to carry out normal activities or to protect his or her rights, including, but not limited to, persons who have physical or developmental disabilities or whose physical or mental abilities have diminished because of age. "Dependent adult" includes any person between the ages of 18 and 64 who is admitted as an inpatient to a 24-hour health facility, as defined in Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code.

(h) As used in this section, "caretaker" means any person who has the care, custody, or control of or who stands in a position of trust with, an elder or a dependent adult.

(i) Nothing in this section shall preclude prosecution under both this section and Section 187 or 12022.7 or any other provision of law. However, a person shall not receive an additional term of imprisonment under both paragraphs (2) and (3) of subdivision (a) for any single offense, nor shall a person receive an additional term of imprisonment under both Section 12022.7 and paragraph (2) or (3) of subdivision (a) for any single offense.

SEC. 2.1. Section 368 of the Penal Code is amended to read:

368. (a) The Legislature finds and declares that crimes against elders and dependent adults are deserving of special consideration and protection, not unlike the special protections provided for minor children, because elders and dependent adults may be confused, on various medications, mentally or physically impaired, or incompetent, and therefore less able to protect themselves, to understand or report criminal conduct, or to testify in court proceedings on their own behalf.

(b) (1) Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult, with knowledge that he or she is an elder or a dependent adult, to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured, or willfully causes or permits the elder or dependent adult to be placed in a situation in which his or her person or health is endangered, is punishable by imprisonment in the county jail not exceeding one year, or in the state prison for two, three, or four years.

(2) If in the commission of an offense described in paragraph (1), the victim suffers great bodily injury, as defined in subdivision (e) of Section 12022.7, the defendant shall receive an additional term in the state prison as follows:

(A) Three years if the victim is under 70 years of age.

(B) Five years if the victim is 70 years of age or older.

(3) If in the commission of an offense described in paragraph (1), the defendant proximately causes the death of the victim, the defendant shall receive an additional term in the state prison as follows:

(A) Five years if the victim is under 70 years of age.

(B) Seven years if the victim is 70 years of age or older.

(c) Any person who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult, with knowledge that he or she is an elder or a dependent adult, to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured or willfully causes or permits the elder or dependent adult to be placed in a situation in which his or her person or health may be endangered, is guilty of a misdemeanor.

(d) Any person who is not a caretaker who violates any provision of law proscribing theft or embezzlement, with respect to the property of an elder or dependent adult, and who knows or reasonably should know that the victim is an elder or dependent adult, is punishable by imprisonment in a county jail not exceeding one year, or in the state prison for two, three, or four years, when the money, labor, or real or personal property taken is of a value exceeding four hundred dollars ($400); and by a fine not exceeding one thousand dollars ($1,000), by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, when the money, labor, or real or personal property taken is of a value not exceeding four hundred dollars ($400).

(e) Any caretaker of an elder or a dependent adult who violates any provision of law proscribing theft or embezzlement, with respect to the property of that elder or dependent adult, is punishable by imprisonment in a county jail not exceeding one year, or in the state prison for two, three, or four years when the money, labor, or real or personal property taken is of a value exceeding four hundred dollars ($400), and by a fine not exceeding one thousand dollars ($1,000), by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, when the money, labor, or real or personal property taken is of a value not exceeding four hundred dollars ($400).

(f) Any person who commits the false imprisonment of an elder or dependent adult by the use of violence, menace, fraud, or deceit

is punishable by imprisonment in the state prison for two, three, or four years.

(g) As used in this section, "elder" means any person who is 65 years of age or older.

(h) As used in this section, "dependent adult" means any person who is between the ages of 18 and 64, who has physical or mental limitations which restrict his or her ability to carry out normal activities or to protect his or her rights, including, but not limited to, persons who have physical or developmental disabilities or whose physical or mental abilities have diminished because of age. "Dependent adult" includes any person between the ages of 18 and 64 who is admitted as an inpatient to a 24-hour health facility, as defined in Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code.

(i) As used in this section, "caretaker" means any person who has the care, custody, or control of, or who stands in a position of trust with, an elder or a dependent adult.

(j) Nothing in this section shall preclude prosecution under both this section and Section 187 or 12022.7 or any other provision of law. However, a person shall not receive an additional term of imprisonment under both paragraphs (2) and (3) of subdivision (b) for any single offense, nor shall a person receive an additional term of imprisonment under both Section 12022.7 and paragraph (2) or (3) of subdivision (b) for any single offense.

SEC. 2.2. Section 368 of the Penal Code is amended to read:

368. (a) The Legislature finds and declares that crimes against elders and dependent adults are deserving of special consideration and protection, not unlike the special protections provided for minor children, because elders and dependent adults may be confused, on various medications, mentally or physically impaired, or incompetent, and therefore less able to protect themselves, to understand or report criminal conduct, or to testify in court proceedings on their own behalf.

(b) (1) Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult, with knowledge that he or she is an elder or a dependent adult, to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, shall be punished by imprisonment in a county jail not exceeding one year, or in the state prison for two, three, or four years.

(2) If in the commission of an offense described in paragraph (1), the victim suffers great bodily injury, as defined in subdivision (e) of Section 12022.7, the defendant shall receive an additional term in the state prison as follows:

(A) Three years if the victim is under 70 years of age.

(B) Five years if the victim is 70 years of age or older.

(3) If in the commission of an offense described in paragraph (1), the defendant proximately causes the death of the victim, the

defendant shall receive an additional term in the state prison as follows:

(A) Five years if the victim is under 70 years of age.

(B) Seven years if the victim is 70 years of age or older.

(c) Any person who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult, with knowledge that he or she is an elder or a dependent adult, to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, is guilty of a misdemeanor.

(d) Any caretaker of an elder or dependent adult, who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult, with knowledge that he or she is an elder or a dependent adult, to be neglected through a failure to prevent malnutrition, provide medical care for physical and mental health needs, assist with personal hygiene, or furnish food, clothing, or shelter or willfully causes or permits the elder or dependent adult to be placed in a situation where his or her person or health is endangered, shall be punished, in addition to any other punishment, by imprisonment in a county jail not exceeding one year, or in the state prison for two, three, or four years.

(e) Any caretaker of an elder or dependent adult, who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult, with knowledge that he or she is an elder or dependent adult, to be neglected through a failure to prevent malnutrition, provide medical care for physical and mental health needs, assist with personal hygiene, or furnish food, clothing, or shelter, or willfully causes or permits the elder or dependent to be placed in a situation such that his or her person or health is endangered, is guilty of a misdemeanor.

(f) In determining the punishment to be imposed upon a conviction under subdivisions (d) and (e), the court shall consider all relevant facts, including, but not limited to, the following:

(1) Whether the neglect exposed the elder or dependent adult to the risk of death or serious physical harm.

(2) Whether the neglect had a direct or immediate relationship to the health, safety, or security of the elder or dependent adult.

(3) The presence or absence of good faith efforts by the defendant to prevent the neglect.

(g) Any caretaker of an elder or a dependent adult who violates any provision of law proscribing theft or embezzlement, with respect to the property of that elder or dependent adult, is punishable by imprisonment in a county jail not exceeding one year, or in the state prison for two, three, or four years when the money, labor, or real or personal property taken is of a value exceeding four hundred dollars ($400), and by a fine not exceeding one thousand dollars ($1,000), by

imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, when the money, labor, or real or personal property taken is of a value not exceeding four hundred dollars ($400).

(h) Any person who is not a caretaker who violates any provision of law proscribing theft or embezzlement, with respect to the property of an elder or dependent adult, and who knows or reasonably should know that the victim is an elder or dependent adult, is punishable by imprisonment in a county jail not exceeding one year, or in the state prison for two, three, or four years, when the money, labor, or real or personal property taken is of a value exceeding four hundred dollars ($400); and by a fine not exceeding one thousand dollars ($1,000), by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, when the money, labor, or real or personal property taken is of a value not exceeding four hundred dollars ($400).

(i) Any person who commits the false imprisonment of an elder or dependent adult by the use of violence, menace, fraud, or deceit is punishable by imprisonment in the state prison for two, three, or four years.

(j) As used in this section, "neglect" means that a caretaker of an elder or a dependent adult either acted, or failed to act, in a manner which constitutes a reckless, gross, or culpable departure from an ordinary standard of care.

(k) As used in subdivisions (d) and (e), "willfully" when applied to the intent with which an act is done or omitted, implies simply a purpose or willingness to commit the act, or failure to act, in a manner which constitutes a reckless, gross, or culpable departure from an ordinary standard of care. It does not require any specific intent to violate any law or to injure another or to acquire any advantage.

(*l*) As used in this section, "elder" means any person who is 65 years of age or older.

(m) As used in this section, "dependent adult" means any person who is between the ages of 18 and 64, who has physical or mental limitations which restrict his or her ability to carry out normal activities or to protect his or her rights, including, but not limited to, persons who have physical or developmental disabilities or whose physical or mental abilities have diminished because of age. "Dependent adult" includes any person between the ages of 18 and 64 who is admitted as an inpatient to a 24-hour health facility, as defined in Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code.

(n) As used in this section, "caretaker" means any person who has the care, custody, or control of or who stands in a position of trust with, an elder or a dependent adult.

(o) Nothing in this section shall preclude prosecution under both this section and Section 187 or 12022.7 or any other provision of law. However, a person shall not receive an additional term of

imprisonment under both paragraphs (2) and (3) of subdivision (b) for any single offense, nor shall a person receive an additional term of imprisonment under both Section 12022.7 and paragraph (2) or (3) of subdivision (b) for any single offense.

SEC. 3. The heading of Part 7 (commencing with Section 250) of Division 2 of the Probate Code is amended to read:

PART 7. EFFECT OF HOMICIDE OR ABUSE OF AN ELDER OR DEPENDENT ADULT

SEC. 4. Section 259 is added to the Probate Code, to read:

259. (a) Any person shall be deemed to have predeceased a decedent to the extent provided in subdivision (c) where all of the following apply:

(1) It has been proven by clear and convincing evidence that the person is liable for physical abuse, neglect, or fiduciary abuse of the decedent, who was an elder or dependent adult.

(2) The person is found to have acted in bad faith.

(3) The person has been found to have been reckless, oppressive, fraudulent, or malicious in the commission of any of these acts upon the decedent.

(4) The decedent, at the time those acts occurred and thereafter until the time of his or her death, has been found to have been substantially unable to manage his or her financial resources or to resist fraud or undue influence.

(b) Any person shall be deemed to have predeceased a decedent to the extent provided in subdivision (c) if that person has been convicted of a violation of Section 236 of the Penal Code or any offense described in Section 368 of the Penal Code.

(c) Any person found liable under subdivision (a) or convicted under subdivision (b) shall not (1) receive any property, damages, or costs that are awarded to the decedent's estate in an action described in subdivision (a) or (b), whether that person's entitlement is under a will, a trust, or the laws of intestacy; or (2) serve as a fiduciary as defined in Section 39, if the instrument nominating or appointing that person was executed during the period when the decedent was substantially unable to manage his or her financial resources or resist fraud or undue influence. This section shall not apply to a decedent who, at any time following the act or acts described in paragraph (1) of subdivision (a), or the act or acts described in subdivision (b), was substantially able to manage his or her financial resources and to resist fraud or undue influence within the meaning of subdivision (b) of Section 1801 of the Probate Code and subdivision (b) of Section 39 of the Civil Code.

(d) For purposes of this section, the following definitions shall apply:

(1) Physical abuse as defined in Section 15610.63 of the Welfare and Institutions Code.

(2) Neglect as defined in Section 15610.57 of the Welfare and Institutions Code.

(3) False imprisonment as defined in Section 368 of the Penal Code.

(4) Fiduciary abuse as defined in Section 15610.30 of the Welfare and Institutions Code.

(e) Nothing in this section shall be construed to prohibit the severance and transfer of an action or proceeding to a separate civil action pursuant to Section 801.

SEC. 5. Section 2583 of the Probate Code is amended to read:

2583. In determining whether to authorize or require a proposed action under this article, the court shall take into consideration all the relevant circumstances, which may include, but are not limited to, the following:

(a) Whether the conservatee has legal capacity for the proposed transaction and, if not, the probability of the conservatee's recovery of legal capacity.

(b) The past donative declarations, practices, and conduct of the conservatee.

(c) The traits of the conservatee.

(d) The relationship and intimacy of the prospective donees with the conservatee, their standards of living, and the extent to which they would be natural objects of the conservatee's bounty by any objective test based on such relationship, intimacy, and standards of living.

(e) The wishes of the conservatee.

(f) Any known estate plan of the conservatee (including, but not limited to, the conservatee's will, any trust of which the conservatee is the settlor or beneficiary, any power of appointment created by or exercisable by the conservatee, and any contract, transfer, or joint ownership arrangement with provisions for payment or transfer of benefits or interests at the conservatee's death to another or others which the conservatee may have originated).

(g) The manner in which the estate would devolve upon the conservatee's death, giving consideration to the age and the mental and physical condition of the conservatee, the prospective devisees or heirs of the conservatee, and the prospective donees.

(h) The value, liquidity, and productiveness of the estate.

(i) The minimization of current or prospective income, estate, inheritance, or other taxes or expenses of administration.

(j) Changes of tax laws and other laws which would likely have motivated the conservatee to alter the conservatee's estate plan.

(k) The likelihood from all the circumstances that the conservatee as a reasonably prudent person would take the proposed action if the conservatee had the capacity to do so.

(*l*) Whether any beneficiary is a person described in paragraph (1) of subdivision (b) of Section 21350.

(m) Whether a beneficiary has committed physical abuse, neglect, false imprisonment, or fiduciary abuse against the conservatee after the conservatee was substantially unable to manage his or her financial resources, or resist fraud or undue influence, and the conservatee's disability persisted throughout the time of the hearing on the proposed substituted judgment.

SEC. 6. (a) Section 2.1 of this bill incorporates amendments to Section 368 of the Penal Code proposed by this bill, SB 2168 and AB 880. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 368 of the Penal Code, and (3) AB 1955 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 2168 and AB 880, in which case Section 368 and of the Penal Code, as amended by SB 2168 shall remain operative only until the operative date of this bill, at which time Section 2.1 of this bill shall become operative, and Sections 2 and 2.2 of this bill shall not become operative.

(b) Section 2.2 of this bill incorporates amendments to Section 368 of the Penal Code proposed by this bill, SB 2168, AB 880, and AB 1955. 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 368 of the Penal Code, (3) this bill is enacted after all three of the other bills, in which case Section 368 of the Penal Code, as amended by SB 2168 shall remain operative only until the operative date of this bill, at which time Section 2.2 of this bill shall become operative, and Sections 2 and 2.1 of this bill shall not become operative.

SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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

CHAPTER 936

An act to amend Sections 11370.2 and 11379.9 of the Health and Safety Code, to amend Sections 245.1, 286, 288a, 289, 368, 422.75, 667.61, 667.7, 1170.11, 1174.4, 1192.7, 1269b, 2933.5, 2962, 3003, 3057, and 12022.53 of the Penal Code, and to amend Sections 676, 707, and

3052 of the Welfare and Institutions Code, relating to crimes, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 28, 1998. Filed with Secretary of State September 28, 1998.]

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

SECTION 1. Section 11370.2 of the Health and Safety Code is amended to read:

11370.2. (a) Any person convicted of a violation of, or of a conspiracy to violate, Section 11351, 11351.5, or 11352 shall receive, in addition to any other punishment authorized by law, including Section 667.5 of the Penal Code, a full, separate, and consecutive three-year term for each prior felony conviction of, or for each prior felony conviction of conspiracy to violate, Section 11351, 11351.5, 11352, 11378, 11378.5, 11379, 11379.5, 11379.6, 11380, 11380.5, or 11383, whether or not the prior conviction resulted in a term of imprisonment.

(b) Any person convicted of a violation of, or of a conspiracy to violate, Section 11378.5, 11379.5, 11379.6, 11380.5, or 11383 shall receive, in addition to any other punishment authorized by law, including Section 667.5 of the Penal Code, a full, separate, and consecutive three-year term for each prior felony conviction of, or for each prior felony conviction of conspiracy to violate, Section 11351, 11351.5, 11352, 11378, 11378.5, 11379, 11379.5, 11379.6, 11380, 11380.5, or 11383, whether or not the prior conviction resulted in a term of imprisonment.

(c) Any person convicted of a violation of, or of a conspiracy to violate, Section 11378 or 11379 with respect to any substance containing a controlled substance specified in paragraph (1) or (2) of subdivision (d) of Section 11055 shall receive, in addition to any other punishment authorized by law, including Section 667.5 of the Penal Code, a full, separate, and consecutive three-year term for each prior felony conviction of, or for each prior felony conviction of conspiracy to violate, Section 11351, 11351.5, 11352, 11378, 11378.5, 11379, 11379.5, 11379.6, 11380, 11380.5, or 11383, whether or not the prior conviction resulted in a term of imprisonment.

(d) The enhancements provided for in this section shall be pleaded and proven as provided by law.

(e) The conspiracy enhancements provided for in this section shall not be imposed unless the trier of fact finds that the defendant conspirator was substantially involved in the planning, direction, execution, or financing of the underlying offense.

(f) Prior convictions from another jurisdiction qualify for use under this section pursuant to Section 668.

SEC. 2. Section 11379.9 of the Health and Safety Code is amended to read:

11379.9. (a) Except as provided by Section 11379.7, any person convicted of a violation of, or of an attempt to violate, subdivision (a) of Section 11379.6 or Section 11383, as those sections relate to methamphetamine or phencyclidine, when the commission or attempted commission of the offense causes the death or great bodily injury of another person other than an accomplice, shall, in addition and consecutive to any other punishment authorized by law, be punished by an additional term of one year in the state prison for each death or injury.

(b) Nothing in this section shall preclude prosecution under both this section and Section 187, 192, or 12022.7, or any other provision of law. However, a person who is punished under another provision of law for causing death or great bodily injury as described in subdivision (a) shall not receive an additional term of imprisonment under this section.

SEC. 3. Section 245.1 of the Penal Code is amended to read:

245.1. As used in Sections 148.2, 241, 243, 244.5, and 245, "fireman" or "firefighter" includes 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, whether this person is a volunteer or partly paid or fully paid.

As used in Section 148.2, "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, whether this person is a volunteer or partly paid or fully paid, while he or she is actually engaged in the on-the-site rescue of persons or property during an emergency as defined by subdivision (c) of Section 148.3.

SEC. 4. Section 286 of the Penal Code is amended to read:

286. (a) Sodomy is sexual conduct consisting of contact between the penis of one person and the anus of another person. Any sexual penetration, however slight, is sufficient to complete the crime of sodomy.

(b) (1) Except as provided in Section 288, any person who participates in an act of sodomy with another person who is under 18 years of age shall be punished by imprisonment in the state prison, or in a county jail for not more than one year.

(2) Except as provided in Section 288, any person over the age of 21 years who participates in an act of sodomy with another person who is under 16 years of age shall be guilty of a felony.

(c) (1) Any person who participates in an act of sodomy with another person who is under 14 years of age and more than 10 years younger than he or she shall be punished by imprisonment in the state prison for three, six, or eight years.

(2) Any person who commits an act of sodomy when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person shall be punished by imprisonment in the state prison for three, six, or eight years.

(3) Any person whom commits an act of sodomy where the act is accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat shall be punished by imprisonment in the state prison for three, six, or eight years.

(d) Any person who, while voluntarily acting in concert with another person, either personally or aiding and abetting that other person, commits an act of sodomy when the act is accomplished against the victim's will by means of force or fear of immediate and unlawful bodily injury on the victim or another person or where the act is accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat shall be punished by imprisonment in the state prison for five, seven, or nine years.

(e) Any person who participates in an act of sodomy with any person of any age while confined in any state prison, as defined in Section 4504, or in any local detention facility, as defined in Section 6031.4, shall be punished by imprisonment in the state prison, or in a county jail for not more than one year.

(f) Any person who commits an act of sodomy, and the victim is at the time unconscious of the nature of the act and this is known to the person committing the act, shall be punished by imprisonment in the state prison for three, six, or eight years. As used in this subdivision, "unconscious of the nature of the act" means incapable of resisting because the victim meets one of the following conditions:

(1) Was unconscious or asleep.

(2) Was not aware, knowing, perceiving, or cognizant that the act occurred.

(3) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraud in fact.

(g) Except as provided in subdivision (h), a person who commits an act of sodomy, and the victim is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act, shall be punished by imprisonment in the state prison for three, six, or eight years. Notwithstanding the existence of a conservatorship pursuant to the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), the prosecuting attorney shall prove, as an element of the crime, that a

mental disorder or developmental or physical disability rendered the alleged victim incapable of giving consent.

(h) Any person who commits an act of sodomy, and the victim is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act, and both the defendant and the victim are at the time confined in a state hospital for the care and treatment of the mentally disordered or in any other public or private facility for the care and treatment of the mentally disordered approved by a county mental health director, shall be punished by imprisonment in the state prison, or in a county jail for not more than one year. Notwithstanding the existence of a conservatorship pursuant to the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), the prosecuting attorney shall prove, as an element of the crime, that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving legal consent.

(i) Any person who commits an act of sodomy, where the victim is prevented from resisting by an intoxicating or anesthetic substance, or any controlled substance, and this condition was known, or reasonably should have been known by the accused, shall be punished by imprisonment in the state prison for three, six, or eight years.

(j) Any person who commits an act of sodomy, where the victim submits under the belief that the person committing the act is the victim's spouse, and this belief is induced by any artifice, pretense, or concealment practiced by the accused, with intent to induce the belief, shall be punished by imprisonment in the state prison for three, six, or eight years.

(k) Any person who commits an act of sodomy, where the act is accomplished against the victim's will by threatening to use the authority of a public official to incarcerate, arrest, or deport the victim or another, and the victim has a reasonable belief that the perpetrator is a public official, shall be punished by imprisonment in the state prison for three, six, or eight years.

As used in this subdivision, "public official" means a person employed by a governmental agency who has the authority, as part of that position, to incarcerate, arrest, or deport another. The perpetrator does not actually have to be a public official.

(*l*) As used in subdivisions (c) and (d), "threatening to retaliate" means a threat to kidnap or falsely imprison, or inflict extreme pain, serious bodily injury, or death.

(m) In addition to any punishment imposed under this section, the judge may assess a fine not to exceed seventy dollars ($70) against any person who violates this section, with the proceeds of this fine to be used in accordance with Section 1463.23. The court, however, shall take into consideration the defendant's ability to pay, and no

defendant shall be denied probation because of his or her inability to pay the fine permitted under this subdivision.

SEC. 5. Section 288a of the Penal Code is amended to read:

288a. (a) Oral copulation is the act of copulating the mouth of one person with the sexual organ or anus of another person.

(b) (1) Except as provided in Section 288, any person who participates in an act of oral copulation with another person who is under 18 years of age shall be punished by imprisonment in the state prison, or in a county jail for a period of not more than one year.

(2) Except as provided in Section 288, any person over the age of 21 years who participates in an act of oral copulation with another person who is under 16 years of age is guilty of a felony.

(c) (1) Any person who participates in an act of oral copulation with another person who is under 14 years of age and more than 10 years younger than he or she shall be punished by imprisonment in the state prison for three, six, or eight years.

(2) Any person who commits an act of oral copulation when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person shall be punished by imprisonment in the state prison for three, six, or eight years.

(3) Any person who commits an act of oral copulation where the act is accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat shall be punished by imprisonment in the state prison for three, six, or eight years.

(d) Any person who, while voluntarily acting in concert with another person, either personally or by aiding and abetting that other person, commits an act of oral copulation (1) when the act is accomplished against the victim's will by means of force or fear of immediate and unlawful bodily injury on the victim or another person, or (2) where the act is accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat, or (3) where the victim is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act shall be punished by imprisonment in the state prison for five, seven, or nine years. Notwithstanding the appointment of a conservator with respect to the victim pursuant to the provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), the prosecuting attorney shall prove, as an element of the crime described under paragraph (3), that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving legal consent.

(e) Any person who participates in an act of oral copulation while confined in any state prison, as defined in Section 4504 or in any local detention facility as defined in Section 6031.4, shall be punished by imprisonment in the state prison, or in a county jail for a period of not more than one year.

(f) Any person who commits an act of oral copulation, and the victim is at the time unconscious of the nature of the act and this is known to the person committing the act, shall be punished by imprisonment in the state prison for a period of three, six, or eight years. As used in this subdivision, "unconscious of the nature of the act" means incapable of resisting because the victim meets one of the following conditions:

(1) Was unconscious or asleep.

(2) Was not aware, knowing, perceiving, or cognizant that the act occurred.

(3) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraud in fact.

(g) Except as provided in subdivision (h), any person who commits an act of oral copulation, and the victim is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act, shall be punished by imprisonment in the state prison, for three, six, or eight years. Notwithstanding the existence of a conservatorship pursuant to the provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), the prosecuting attorney shall prove, as an element of the crime, that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving consent.

(h) Any person who commits an act of oral copulation, and the victim is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act, and both the defendant and the victim are at the time confined in a state hospital for the care and treatment of the mentally disordered or in any other public or private facility for the care and treatment of the mentally disordered approved by a county mental health director, shall be punished by imprisonment in the state prison, or in a county jail for a period of not more than one year. Notwithstanding the existence of a conservatorship pursuant to the provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), the prosecuting attorney shall prove, as an element of the crime, that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving legal consent.

(i) Any person who commits an act of oral copulation, where the victim is prevented from resisting by any intoxicating or anesthetic

substance, or any controlled substance, and this condition was known, or reasonably should have been known by the accused, shall be punished by imprisonment in the state prison for a period of three, six, or eight years.

(j) Any person who commits an act of oral copulation, where the victim submits under the belief that the person committing the act is the victim's spouse, and this belief is induced by any artifice, pretense, or concealment practiced by the accused, with intent to induce the belief, shall be punished by imprisonment in the state prison for a period of three, six, or eight years.

(k) Any person who commits an act of oral copulation, where the act is accomplished against the victim's will by threatening to use the authority of a public official to incarcerate, arrest, or deport the victim or another, and the victim has a reasonable belief that the perpetrator is a public official, shall be punished by imprisonment in the state prison for a period of three, six, or eight years.

As used in this subdivision, "public official" means a person employed by a governmental agency who has the authority, as part of that position, to incarcerate, arrest, or deport another. The perpetrator does not actually have to be a public official.

(*l*) As used in subdivisions (c) and (d), "threatening to retaliate" means a threat to kidnap or falsely imprison, or to inflict extreme pain, serious bodily injury, or death.

(m) In addition to any punishment imposed under this section, the judge may assess a fine not to exceed seventy dollars ($70) against any person who violates this section, with the proceeds of this fine to be used in accordance with Section 1463.23. The court shall, however, take into consideration the defendant's ability to pay, and no defendant shall be denied probation because of his or her inability to pay the fine permitted under this subdivision.

SEC. 6. Section 289 of the Penal Code is amended to read:

289. (a) (1) Every person who causes the penetration, however slight, of the genital or anal openings of any person or causes another person to so penetrate the defendant's or another person's genital or anal openings for the purpose of sexual arousal, gratification, or abuse by any foreign object, substance, instrument, or device, or by any unknown object when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person shall be punished by imprisonment in the state prison for three, six, or eight years.

(2) Every person who causes the penetration, however slight, of the genital or anal openings of any person or causes another person to so penetrate the defendant's or another person's genital or anal openings for the purpose of sexual arousal, gratification, or abuse by any foreign object, substance, instrument, or device, or by any unknown object where the act is accomplished against the victim's will by threatening to retaliate in the future against the victim or any

other person, and there is a reasonable possibility that the perpetrator will execute the threat, shall be punished by imprisonment in the state prison for three, six, or eight years.

(b) Except as provided in subdivision (c), every person who causes the penetration, however slight, of the genital or anal openings of any person or causes another person to so penetrate the defendant's or another person's genital or anal openings for the purpose of sexual arousal, gratification, or abuse by any foreign object, substance, instrument, or device, or by any unknown object, and the victim is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act or causing the act to be committed, shall be punished by imprisonment in the state prison for three, six, or eight years. Notwithstanding the appointment of a conservator with respect to the victim pursuant to the provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), the prosecuting attorney shall prove, as an element of the crime, that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving legal consent.

(c) Every person who causes the penetration, however slight, of the genital or anal openings of any person or causes another person to so penetrate the defendant's or another person's genital or anal openings for the purpose of sexual arousal, gratification, or abuse by any foreign object, substance, instrument, or device, or by any unknown object, and the victim is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act or causing the act to be committed and both the defendant and the victim are at the time confined in a state hospital for the care and treatment of the mentally disordered or in any other public or private facility for the care and treatment of the mentally disordered approved by a county mental health director, shall be punished by imprisonment in the state prison, or in a county jail for a period of not more than one year. Notwithstanding the existence of a conservatorship pursuant to the provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), the prosecuting attorney shall prove, as an element of the crime, that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving legal consent.

(d) Every person who causes the penetration, however slight, of the genital or anal openings of any person or causes another person to so penetrate the defendant's or another person's genital or anal openings for the purpose of sexual arousal, gratification, or abuse by any foreign object, substance, instrument, or device, or by any unknown object, and the victim is at the time unconscious of the

nature of the act and this is known to the person committing the act or causing the act to be committed, shall be punished by imprisonment in the state prison for three, six, or eight years. As used in this subdivision, "unconscious of the nature of the act" means incapable of resisting because the victim meets one of the following conditions:

(1) Was unconscious or asleep.

(2) Was not aware, knowing, perceiving, or cognizant that the act occurred.

(3) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraud in fact.

(e) Every person who causes the penetration, however slight, of the genital or anal openings of any person or causes another person to so penetrate the defendant's or another person's genital or anal openings for the purpose of sexual arousal, gratification, or abuse by any foreign object, substance, instrument, or device, or by any unknown object, where the victim is prevented from resisting by any intoxicating or anesthetic substance, or any controlled substance, and this condition was known, or reasonably should have been known by the accused, shall be punished by imprisonment in the state prison for a period of three, six, or eight years.

(f) Every person who causes the penetration, however slight, of the genital or anal openings of any person or causes another person to so penetrate the defendant's or another person's genital or anal openings for the purpose of sexual arousal, gratification, or abuse by any foreign object, substance, instrument, or device, or by any unknown object, where the victim submits under the belief that the person committing the act or causing the act to be committed is the victim's spouse, and this belief is induced by any artifice, pretense, or concealment practiced by the accused, with intent to induce the belief, shall be punished by imprisonment in the state prison for a period of three, six, or eight years.

(g) Every person who causes the penetration, however slight, of the genital or anal openings of any person or causes another person to so penetrate the defendant's or another person's genital or anal openings for the purpose of sexual arousal, gratification, or abuse by any foreign object, substance, instrument, or device, or by any unknown object, where the act is accomplished against the victim's will by threatening to use the authority of a public official to incarcerate, arrest, or deport the victim or another, and the victim has a reasonable belief that the perpetrator is a public official, shall be punished by imprisonment in the state prison for a period of three, six, or eight years.

As used in this subdivision, "public official" means a person employed by a governmental agency who has the authority, as part of that position, to incarcerate, arrest, or deport another. The perpetrator does not actually have to be a public official.

(h) Except as provided in Section 288, any person who participates in an act of penetration of genital or anal openings with a foreign object, substance, instrument, or device, or by any unknown object of a person who is under 18 years of age or causes another person under 18 years of age to so penetrate the defendant's or another person's genital or anal openings for the purpose of sexual arousal, gratification, or abuse, shall be punished by imprisonment in the state prison or in the county jail for a period of not more than one year.

(i) Except as provided in Section 288, any person over the age of 21 years who participates in an act of penetration of the genital or anal openings with a foreign object, substance, instrument, or device, or by any unknown object of another person who is under 16 years of age or causes another person under 16 years of age to so penetrate the defendant's or another person's genital or anal openings for the purpose of sexual arousal, gratification, or abuse, shall be guilty of a felony.

(j) Any person who participates in an act of penetration of the genital or anal openings with a foreign object, instrument, or device, or by any unknown object of another person who is under 14 years of age and who is more than 10 years younger than he or she or causes another person who is under 14 years of age and who is more than 10 years younger than the defendant to so penetrate the defendant's or another person's genital or anal openings for the purpose of sexual arousal, gratification, or abuse, shall be punished by imprisonment in the state prison for three, six, or eight years.

(k) As used in this section:

(1) "Foreign object, substance, instrument, or device" shall include any part of the body, except a sexual organ.

(2) "Unknown object" shall include any foreign object, substance, instrument, or device, or any part of the body, including a penis, when it is not known whether penetration was by a penis or by a foreign object, substance, instrument, or device, or by any other part of the body.

(*l*) As used in subdivision (a), "threatening to retaliate" means a threat to kidnap or falsely imprison, or inflict extreme pain, serious bodily injury or death.

(m) As used in this section, "victim" includes any person who the defendant causes to penetrate the genital or anal openings of the defendant or another person or whose genital or anal openings are caused to be penetrated by the defendant or another person and who otherwise qualifies as a victim under the requirements of this section.

SEC. 7. Section 368 of the Penal Code is amended to read:

368. (a) (1) Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult, with knowledge that he or she is an elder or a dependent adult, to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or

custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured, or willfully causes or permits the elder or dependent adult to be placed in a situation in which his or her person or health is endangered, is punishable by imprisonment in a county jail not exceeding one year, or in the state prison for two, three, or four years.

(2) If in the commission of an offense described in paragraph (1), the victim suffers great bodily injury, as defined in subdivision (e) of Section 12022.7, the defendant shall receive an additional term in the state prison as follows:

(A) Three years if the victim is under 70 years of age.

(B) Five years if the victim is 70 years of age or older.

(3) If in the commission of an offense described in paragraph (1), the defendant proximately causes the death of the victim, the defendant shall receive an additional term in the state prison as follows:

(A) Five years if the victim is under 70 years of age.

(B) Seven years if the victim is 70 years of age or older.

(b) Any person who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult, with knowledge that he or she is an elder or a dependent adult, to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured or willfully causes or permits the elder or dependent adult to be placed in a situation in which his or her person or health may be endangered, is guilty of a misdemeanor.

(c) Any caretaker of an elder or a dependent adult who violates any provision of law proscribing theft or embezzlement, with respect to the property of that elder or dependent adult, is punishable by imprisonment in a county jail not exceeding one year, or in the state prison for two, three, or four years when the money, labor, or real or personal property taken is of a value exceeding four hundred dollars ($400), and by a fine not exceeding one thousand dollars ($1,000), by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, when the money, labor, or real or personal property taken is of a value not exceeding four hundred dollars ($400).

(d) As used in this section, "elder" means any person who is 65 years of age or older.

(e) As used in this section, "dependent adult" means any person who is between the ages of 18 and 64, who has physical or mental limitations which restrict his or her ability to carry out normal activities or to protect his or her rights, including, but not limited to, persons who have physical or developmental disabilities or whose physical or mental abilities have diminished because of age. "Dependent adult" includes any person between the ages of 18 and

64 who is admitted as an inpatient to a 24-hour health facility, as defined in Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code.

(f) As used in this section, "caretaker" means any person who has the care, custody, or control of, or who stands in a position of trust with, an elder or a dependent adult.

(g) Nothing in this section shall preclude prosecution under both this section and Section 187 or 12022.7 or any other provision of law. However, a person shall not receive an additional term of imprisonment under both paragraphs (2) and (3) of subdivision (a) for any single offense, nor shall a person receive an additional term of imprisonment under both Section 12022.7 and paragraph (2) or (3) of subdivision (a) for any single offense.

SEC. 7.1. Section 368 of the Penal Code is amended to read:

368. (a) (1) Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult, with knowledge that he or she is an elder or a dependent adult, to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured, or willfully causes or permits the elder or dependent adult to be placed in a situation in which his or her person or health is endangered, is punishable by imprisonment in a county jail not exceeding one year, or in the state prison for two, three, or four years.

(2) If in the commission of an offense described in paragraph (1), the victim suffers great bodily injury, as defined in subdivision (e) of Section 12022.7, the defendant shall receive an additional term in the state prison as follows:

(A) Three years if the victim is under 70 years of age.

(B) Five years if the victim is 70 years of age or older.

(3) If in the commission of an offense described in paragraph (1), the defendant proximately causes the death of the victim, the defendant shall receive an additional term in the state prison as follows:

(A) Five years if the victim is under 70 years of age.

(B) Seven years if the victim is 70 years of age or older.

(b) Any person who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult, with knowledge that he or she is an elder or a dependent adult, to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured or willfully causes or permits the elder or dependent adult to be placed in a situation in which his or her person or health may be endangered, is guilty of a misdemeanor.

(c) Any caretaker of an elder or a dependent adult who violates any provision of law proscribing theft or embezzlement, with respect to the property of that elder or dependent adult, is punishable by imprisonment in a county jail not exceeding one year, or in the state prison for two, three, or four years when the money, labor, or real or personal property taken is of a value exceeding four hundred dollars ($400), and by a fine not exceeding one thousand dollars ($1,000), by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, when the money, labor, or real or personal property taken is of a value not exceeding four hundred dollars ($400).

(d) Any person who is not a caretaker who violates any provision of law proscribing theft or embezzlement, with respect to the property of an elder or dependent adult, and who knows or reasonably should know that the victim is an elder or dependent adult, is punishable by imprisonment in a county jail not exceeding one year, or in the state prison for two, three, or four years, when the money, labor, or real or personal property taken is of a value exceeding four hundred dollars ($400); and by a fine not exceeding one thousand dollars ($1,000), by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, when the money, labor, or real or personal property taken is of a value not exceeding four hundred dollars ($400).

(e) As used in this section, "elder" means any person who is 65 years of age or older.

(f) As used in this section, "dependent adult" means any person who is between the ages of 18 and 64, who has physical or mental limitations which restrict his or her ability to carry out normal activities or to protect his or her rights, including, but not limited to, persons who have physical or developmental disabilities or whose physical or mental abilities have diminished because of age. "Dependent adult" includes any person between the ages of 18 and 64 who is admitted as an inpatient to a 24-hour health facility, as defined in Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code.

(g) As used in this section, "caretaker" means any person who has the care, custody, or control of, or who stands in a position of trust with, an elder or a dependent adult.

(h) Nothing in this section shall preclude prosecution under both this section and Section 187 or 12022.7 or any other provision of law. However, a person shall not receive an additional term of imprisonment under both paragraphs (2) and (3) of subdivision (a) for any single offense, nor shall a person receive an additional term of imprisonment under both Section 12022.7 and paragraph (2) or (3) of subdivision (a) for any single offense.

SEC. 7.2. Section 368 of the Penal Code is amended to read:

368. (a) (1) Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or

permits any elder or dependent adult, with knowledge that he or she is an elder or a dependent adult, to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, shall be punished by imprisonment in a county jail not exceeding one year, or in the state prison for two, three, or four years.

(2) If in the commission of an offense described in paragraph (1), the victim suffers great bodily injury, as defined in subdivision (e) of Section 12022.7, the defendant shall receive an additional term in the state prison as follows:

(A) Three years if the victim is under 70 years of age.

(B) Five years if the victim is 70 years of age or older.

(3) If in the commission of an offense described in paragraph (1), the defendant proximately causes the death of the victim, the defendant shall receive an additional term in the state prison as follows:

(A) Five years if the victim is under 70 years of age.

(B) Seven years if the victim is 70 years of age or older.

(b) Any person who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult, with knowledge that he or she is an elder or a dependent adult, to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, is guilty of a misdemeanor.

(c) Any caretaker of an elder or dependent adult, who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult, with knowledge that he or she is an elder or a dependent adult, to be neglected through a failure to prevent malnutrition, provide medical care for physical and mental health needs, assist with personal hygiene, or furnish food, clothing, or shelter or willfully causes or permits the elder or dependent adult to be placed in a situation where his or her person or health is endangered, shall be punished, in addition to any other punishment, by imprisonment in a county jail not exceeding one year, or in the state prison for two, three, or four years.

(d) Any caretaker of an elder or dependent adult, who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult, with knowledge that he or she is an elder or dependent adult, to be neglected through a failure to prevent malnutrition, provide medical care for physical and mental health needs, assist with personal hygiene, or furnish food, clothing, or shelter, or willfully causes or permits the elder or dependent to be placed in a situation such that his or her person or health is endangered, is guilty of a misdemeanor.

(e) In determining the punishment to be imposed upon a conviction under subdivisions (c) and (d), the court shall consider all relevant facts, including, but not limited to, the following:

(1) Whether the neglect exposed the elder or dependent adult to the risk of death or serious physical harm.

(2) Whether the neglect had a direct or immediate relationship to the health, safety, or security of the elder or dependent adult.

(3) The presence or absence of good faith efforts by the defendant to prevent the neglect.

(f) Any caretaker of an elder or a dependent adult who violates any provision of law proscribing theft or embezzlement, with respect to the property of that elder or dependent adult, is punishable by imprisonment in a county jail not exceeding one year, or in the state prison for two, three, or four years when the money, labor, or real or personal property taken is of a value exceeding four hundred dollars ($400), and by a fine not exceeding one thousand dollars ($1,000), by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, when the money, labor, or real or personal property taken is of a value not exceeding four hundred dollars ($400).

(g) As used in this section, "neglect" means that a caretaker of an elder or a dependent adult either acted, or failed to act, in a manner which constitutes a reckless, gross, or culpable departure from an ordinary standard of care.

(h) As used in subdivisions (c) and (d), "willfully" when applied to the intent with which an act is done or omitted, implies simply a purpose or willingness to commit the act, or failure to act, in a manner which constitutes a reckless, gross, or culpable departure from an ordinary standard of care. It does not require any specific intent to violate any law or to injure another or to acquire any advantage.

(i) As used in this section, "elder" means any person who is 65 years of age or older.

(j) As used in this section, "dependent adult" means any person who is between the ages of 18 and 64, who has physical or mental limitations which restrict his or her ability to carry out normal activities or to protect his or her rights, including, but not limited to, persons who have physical or developmental disabilities or whose physical or mental abilities have diminished because of age. "Dependent adult" includes any person between the ages of 18 and 64 who is admitted as an inpatient to a 24-hour health facility, as defined in Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code.

(k) As used in this section, "caretaker" means any person who has the care, custody, or control of, or who stands in a position of trust with, an elder or a dependent adult.

(*l*) Nothing in this section shall preclude prosecution under both this section and Section 187 or 12022.7 or any other provision of law. However, a person shall not receive an additional term of imprisonment under both paragraphs (2) and (3) of subdivision (a) for any single offense, nor shall a person receive an additional term

of imprisonment under both Section 12022.7 and paragraph (2) or (3) of subdivision (a) for any single offense.

SEC. 7.3. Section 368 of the Penal Code is amended to read:

368. (a) The Legislature finds and declares that crimes against elders and dependent adults are deserving of special consideration and protection, not unlike the special protections provided for minor children, because elders and dependent adults may be confused, on various medications, mentally or physically impaired, or incompetent, and therefore less able to protect themselves, to understand or report criminal conduct, or to testify in court proceedings on their own behalf.

(b) (1) Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult, with knowledge that he or she is an elder or a dependent adult, to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured, or willfully causes or permits the elder or dependent adult to be placed in a situation in which his or her person or health is endangered, is punishable by imprisonment in a county jail not exceeding one year, or in the state prison for two, three, or four years.

(2) If in the commission of an offense described in paragraph (1), the victim suffers great bodily injury, as defined in subdivision (e) of Section 12022.7, the defendant shall receive an additional term in the state prison as follows:

(A) Three years if the victim is under 70 years of age.

(B) Five years if the victim is 70 years of age or older.

(3) If in the commission of an offense described in paragraph (1), the defendant proximately causes the death of the victim, the defendant shall receive an additional term in the state prison as follows:

(A) Five years if the victim is under 70 years of age.

(B) Seven years if the victim is 70 years of age or older.

(c) Any person who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult, with knowledge that he or she is an elder or a dependent adult, to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured or willfully causes or permits the elder or dependent adult to be placed in a situation in which his or her person or health may be endangered, is guilty of a misdemeanor.

(d) Any caretaker of an elder or a dependent adult who violates any provision of law proscribing theft or embezzlement, with respect to the property of that elder or dependent adult, is punishable by imprisonment in a county jail not exceeding one year, or in the state

prison for two, three, or four years when the money, labor, or real or personal property taken is of a value exceeding four hundred dollars ($400), and by a fine not exceeding one thousand dollars ($1,000), by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, when the money, labor, or real or personal property taken is of a value not exceeding four hundred dollars ($400).

(e) Any person who commits the false imprisonment of an elder or dependent adult by the use of violence, menace, fraud, or deceit is punishable by imprisonment in the state prison for two, three, or four years.

(f) As used in this section, "elder" means any person who is 65 years of age or older.

(g) As used in this section, "dependent adult" means any person who is between the ages of 18 and 64, who has physical or mental limitations which restrict his or her ability to carry out normal activities or to protect his or her rights, including, but not limited to, persons who have physical or developmental disabilities or whose physical or mental abilities have diminished because of age. "Dependent adult" includes any person between the ages of 18 and 64 who is admitted as an inpatient to a 24-hour health facility, as defined in Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code.

(h) As used in this section, "caretaker" means any person who has the care, custody, or control of, or who stands in a position of trust with, an elder or a dependent adult.

(i) Nothing in this section shall preclude prosecution under both this section and Section 187 or 12022.7 or any other provision of law. However, a person shall not receive an additional term of imprisonment under both paragraphs (2) and (3) of subdivision (b) for any single offense, nor shall a person receive an additional term of imprisonment under both Section 12022.7 and paragraph (2) or (3) of subdivision (b) for any single offense.

SEC. 7.4. Section 368 of the Penal Code is amended to read:

368. (a) (1) Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult, with knowledge that he or she is an elder or a dependent adult, to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, shall be punished by imprisonment in a county jail not exceeding one year, or in the state prison for two, three, or four years.

(2) If in the commission of an offense described in paragraph (1), the victim suffers great bodily injury, as defined in subdivision (e) of Section 12022.7, the defendant shall receive an additional term in the state prison as follows:

(A) Three years if the victim is under 70 years of age.

(B) Five years if the victim is 70 years of age or older.

(3) If in the commission of an offense described in paragraph (1), the defendant proximately causes the death of the victim, the defendant shall receive an additional term in the state prison as follows:

(A) Five years if the victim is under 70 years of age.

(B) Seven years if the victim is 70 years of age or older.

(b) Any person who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult, with knowledge that he or she is an elder or a dependent adult, to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, is guilty of a misdemeanor.

(c) Any caretaker of an elder or dependent adult, who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult, with knowledge that he or she is an elder or a dependent adult, to be neglected through a failure to prevent malnutrition, provide medical care for physical and mental health needs, assist with personal hygiene, or furnish food, clothing, or shelter or willfully causes or permits the elder or dependent adult to be placed in a situation where his or her person or health is endangered, shall be punished, in addition to any other punishment, by imprisonment in a county jail not exceeding one year, or in the state prison for two, three, or four years.

(d) Any caretaker of an elder or dependent adult, who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult, with knowledge that he or she is an elder or dependent adult, to be neglected through a failure to prevent malnutrition, provide medical care for physical and mental health needs, assist with personal hygiene, or furnish food, clothing, or shelter, or willfully causes or permits the elder or dependent to be placed in a situation such that his or her person or health is endangered, is guilty of a misdemeanor.

(e) In determining the punishment to be imposed upon a conviction under subdivisions (c) and (d), the court shall consider all relevant facts, including, but not limited to, the following:

(1) Whether the neglect exposed the elder or dependent adult to the risk of death or serious physical harm.

(2) Whether the neglect had a direct or immediate relationship to the health, safety, or security of the elder or dependent adult.

(3) The presence or absence of good faith efforts by the defendant to prevent the neglect.

(f) Any caretaker of an elder or a dependent adult who violates any provision of law proscribing theft or embezzlement, with respect to the property of that elder or dependent adult, is punishable by imprisonment in a county jail not exceeding one year, or in the state prison for two, three, or four years when the money, labor, or real or

personal property taken is of a value exceeding four hundred dollars ($400), and by a fine not exceeding one thousand dollars ($1,000), by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, when the money, labor, or real or personal property taken is of a value not exceeding four hundred dollars ($400).

(g) Any person who is not a caretaker who violates any provision of law proscribing theft or embezzlement, with respect to the property of an elder or dependent adult, and who knows or reasonably should know that the victim is an elder or dependent adult, is punishable by imprisonment in a county jail not exceeding one year, or in the state prison for two, three, or four years, when the money, labor, or real or personal property taken is of a value exceeding four hundred dollars ($400); and by a fine not exceeding one thousand dollars ($1,000), by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, when the money, labor, or real or personal property taken is of a value not exceeding four hundred dollars ($400).

(h) As used in this section, "neglect" means that a caretaker of an elder or a dependent adult either acted, or failed to act, in a manner which constitutes a reckless, gross, or culpable departure from an ordinary standard of care.

(i) As used in subdivisions (c) and (d), "willfully" when applied to the intent with which an act is done or omitted, implies simply a purpose or willingness to commit the act, or failure to act, in a manner which constitutes a reckless, gross, or culpable departure from an ordinary standard of care. It does not require any specific intent to violate any law or to injure another or to acquire any advantage.

(j) As used in this section, "elder" means any person who is 65 years of age or older.

(k) As used in this section, "dependent adult" means any person who is between the ages of 18 and 64, who has physical or mental limitations which restrict his or her ability to carry out normal activities or to protect his or her rights, including, but not limited to, persons who have physical or developmental disabilities or whose physical or mental abilities have diminished because of age. "Dependent adult" includes any person between the ages of 18 and 64 who is admitted as an inpatient to a 24-hour health facility, as defined in Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code.

(*l*) As used in this section, "caretaker" means any person who has the care, custody, or control of, or who stands in a position of trust with, an elder or a dependent adult.

(m) Nothing in this section shall preclude prosecution under both this section and Section 187 or 12022.7 or any other provision of law. However, a person shall not receive an additional term of imprisonment under both paragraphs (2) and (3) of subdivision (a) for any single offense, nor shall a person receive an additional term

of imprisonment under both Section 12022.7 and paragraph (2) or (3) of subdivision (a) for any single offense.

SEC. 7.5. Section 368 of the Penal Code is amended to read:

368. (a) The Legislature finds and declares that crimes against elders and dependent adults are deserving of special consideration and protection, not unlike the special protections provided for minor children, because elders and dependent adults may be confused, on various medications, mentally or physically impaired, or incompetent, and therefore less able to protect themselves, to understand or report criminal conduct, or to testify in court proceedings on their own behalf.

(b) (1) Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult, with knowledge that he or she is an elder or a dependent adult, to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured, or willfully causes or permits the elder or dependent adult to be placed in a situation in which his or her person or health is endangered, is punishable by imprisonment in a county jail not exceeding one year, or in the state prison for two, three, or four years.

(2) If in the commission of an offense described in paragraph (1), the victim suffers great bodily injury, as defined in subdivision (e) of Section 12022.7, the defendant shall receive an additional term in the state prison as follows:

(A) Three years if the victim is under 70 years of age.

(B) Five years if the victim is 70 years of age or older.

(3) If in the commission of an offense described in paragraph (1), the defendant proximately causes the death of the victim, the defendant shall receive an additional term in the state prison as follows:

(A) Five years if the victim is under 70 years of age.

(B) Seven years if the victim is 70 years of age or older.

(c) Any person who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult, with knowledge that he or she is an elder or a dependent adult, to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured or willfully causes or permits the elder or dependent adult to be placed in a situation in which his or her person or health may be endangered, is guilty of a misdemeanor.

(d) Any person who is not a caretaker who violates any provision of law proscribing theft or embezzlement, with respect to the property of an elder or dependent adult, and who knows or reasonably should know that the victim is an elder or dependent

adult, is punishable by imprisonment in a county jail not exceeding one year, or in the state prison for two, three, or four years, when the money, labor, or real or personal property taken is of a value exceeding four hundred dollars ($400); and by a fine not exceeding one thousand dollars ($1,000), by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, when the money, labor, or real or personal property taken is of a value not exceeding four hundred dollars ($400).

(e) Any caretaker of an elder or a dependent adult who violates any provision of law proscribing theft or embezzlement, with respect to the property of that elder or dependent adult, is punishable by imprisonment in a county jail not exceeding one year, or in the state prison for two, three, or four years when the money, labor, or real or personal property taken is of a value exceeding four hundred dollars ($400), and by a fine not exceeding one thousand dollars ($1,000), by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, when the money, labor, or real or personal property taken is of a value not exceeding four hundred dollars ($400).

(f) Any person who commits the false imprisonment of an elder or dependent adult by the use of violence, menace, fraud, or deceit is punishable by imprisonment in the state prison for two, three, or four years.

(g) As used in this section, "elder" means any person who is 65 years of age or older.

(h) As used in this section, "dependent adult" means any person who is between the ages of 18 and 64, who has physical or mental limitations which restrict his or her ability to carry out normal activities or to protect his or her rights, including, but not limited to, persons who have physical or developmental disabilities or whose physical or mental abilities have diminished because of age. "Dependent adult" includes any person between the ages of 18 and 64 who is admitted as an inpatient to a 24-hour health facility, as defined in Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code.

(i) As used in this section, "caretaker" means any person who has the care, custody, or control of, or who stands in a position of trust with, an elder or a dependent adult.

(j) Nothing in this section shall preclude prosecution under both this section and Section 187 or 12022.7 or any other provision of law. However, a person shall not receive an additional term of imprisonment under both paragraphs (2) and (3) of subdivision (b) for any single offense, nor shall a person receive an additional term of imprisonment under both Section 12022.7 and paragraph (2) or (3) of subdivision (b) for any single offense.

SEC. 7.6. Section 368 of the Penal Code is amended to read:

368. (a) The Legislature finds and declares that crimes against elders and dependent adults are deserving of special consideration

and protection, not unlike the special protections provided for minor children, because elders and dependent adults may be confused, on various medications, mentally or physically impaired, or incompetent, and therefore less able to protect themselves, to understand or report criminal conduct, or to testify in court proceedings on their own behalf.

(b) (1) Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult, with knowledge that he or she is an elder or a dependent adult, to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, shall be punished by imprisonment in a county jail not exceeding one year, or in the state prison for two, three, or four years.

(2) If in the commission of an offense described in paragraph (1), the victim suffers great bodily injury, as defined in subdivision (e) of Section 12022.7, the defendant shall receive an additional term in the state prison as follows:

(A) Three years if the victim is under 70 years of age.

(B) Five years if the victim is 70 years of age or older.

(3) If in the commission of an offense described in paragraph (1), the defendant proximately causes the death of the victim, the defendant shall receive an additional term in the state prison as follows:

(A) Five years if the victim is under 70 years of age.

(B) Seven years if the victim is 70 years of age or older.

(c) Any person who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult, with knowledge that he or she is an elder or a dependent adult, to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, is guilty of a misdemeanor.

(d) Any caretaker of an elder or dependent adult, who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult, with knowledge that he or she is an elder or a dependent adult, to be neglected through a failure to prevent malnutrition, provide medical care for physical and mental health needs, assist with personal hygiene, or furnish food, clothing, or shelter or willfully causes or permits the elder or dependent adult to be placed in a situation where his or her person or health is endangered, shall be punished, in addition to any other punishment, by imprisonment in a county jail not exceeding one year, or in the state prison for two, three, or four years.

(e) Any caretaker of an elder or dependent adult, who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult, with knowledge that he or she is an elder or dependent adult, to be neglected through a failure to prevent

malnutrition, provide medical care for physical and mental health needs, assist with personal hygiene, or furnish food, clothing, or shelter, or willfully causes or permits the elder or dependent to be placed in a situation such that his or her person or health is endangered, is guilty of a misdemeanor.

(f) In determining the punishment to be imposed upon a conviction under subdivisions (d) and (e), the court shall consider all relevant facts, including, but not limited to, the following:

(1) Whether the neglect exposed the elder or dependent adult to the risk of death or serious physical harm.

(2) Whether the neglect had a direct or immediate relationship to the health, safety, or security of the elder or dependent adult.

(3) The presence or absence of good faith efforts by the defendant to prevent the neglect.

(g) Any caretaker of an elder or a dependent adult who violates any provision of law proscribing theft or embezzlement, with respect to the property of that elder or dependent adult, is punishable by imprisonment in a county jail not exceeding one year, or in the state prison for two, three, or four years when the money, labor, or real or personal property taken is of a value exceeding four hundred dollars ($400), and by a fine not exceeding one thousand dollars ($1,000), by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, when the money, labor, or real or personal property taken is of a value not exceeding four hundred dollars ($400).

(h) Any person who commits the false imprisonment of an elder or dependent adult by the use of violence, menace, fraud, or deceit is punishable by imprisonment in the state prison for two, three, or four years.

(i) As used in this section, "neglect" means that a caretaker of an elder or a dependent adult either acted, or failed to act, in a manner which constitutes a reckless, gross, or culpable departure from an ordinary standard of care.

(j) As used in subdivisions (d) and (e), "willfully" when applied to the intent with which an act is done or omitted, implies simply a purpose or willingness to commit the act, or failure to act, in a manner which constitutes a reckless, gross, or culpable departure from an ordinary standard of care. It does not require any specific intent to violate any law or to injure another or to acquire any advantage.

(k) As used in this section, "elder" means any person who is 65 years of age or older.

(*l*) As used in this section, "dependent adult" means any person who is between the ages of 18 and 64, who has physical or mental limitations which restrict his or her ability to carry out normal activities or to protect his or her rights, including, but not limited to, persons who have physical or developmental disabilities or whose physical or mental abilities have diminished because of age. "Dependent adult" includes any person between the ages of 18 and

64 who is admitted as an inpatient to a 24-hour health facility, as defined in Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code.

(m) As used in this section, "caretaker" means any person who has the care, custody, or control of, or who stands in a position of trust with, an elder or a dependent adult.

(n) Nothing in this section shall preclude prosecution under both this section and Section 187 or 12022.7 or any other provision of law. However, a person shall not receive an additional term of imprisonment under both paragraphs (2) and (3) of subdivision (b) for any single offense, nor shall a person receive an additional term of imprisonment under both Section 12022.7 and paragraph (2) or (3) of subdivision (b) for any single offense.

SEC. 7.7. Section 368 of the Penal Code is amended to read:

368. (a) The Legislature finds and declares that crimes against elders and dependent adults are deserving of special consideration and protection, not unlike the special protections provided for minor children, because elders and dependent adults may be confused, on various medications, mentally or physically impaired, or incompetent, and therefore less able to protect themselves, to understand or report criminal conduct, or to testify in court proceedings on their own behalf.

(b) (1) Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult, with knowledge that he or she is an elder or a dependent adult, to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, shall be punished by imprisonment in a county jail not exceeding one year, or in the state prison for two, three, or four years.

(2) If in the commission of an offense described in paragraph (1), the victim suffers great bodily injury, as defined in subdivision (e) of Section 12022.7, the defendant shall receive an additional term in the state prison as follows:

(A) Three years if the victim is under 70 years of age.

(B) Five years if the victim is 70 years of age or older.

(3) If in the commission of an offense described in paragraph (1), the defendant proximately causes the death of the victim, the defendant shall receive an additional term in the state prison as follows:

(A) Five years if the victim is under 70 years of age.

(B) Seven years if the victim is 70 years of age or older.

(c) Any person who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult, with knowledge that he or she is an elder or a dependent adult, to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, is guilty of a misdemeanor.

(d) Any caretaker of an elder or dependent adult, who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult, with knowledge that he or she is an elder or a dependent adult, to be neglected through a failure to prevent malnutrition, provide medical care for physical and mental health needs, assist with personal hygiene, or furnish food, clothing, or shelter or willfully causes or permits the elder or dependent adult to be placed in a situation where his or her person or health is endangered, shall be punished, in addition to any other punishment, by imprisonment in a county jail not exceeding one year, or in the state prison for two, three, or four years.

(e) Any caretaker of an elder or dependent adult, who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult, with knowledge that he or she is an elder or dependent adult, to be neglected through a failure to prevent malnutrition, provide medical care for physical and mental health needs, assist with personal hygiene, or furnish food, clothing, or shelter, or willfully causes or permits the elder or dependent to be placed in a situation such that his or her person or health is endangered, is guilty of a misdemeanor.

(f) In determining the punishment to be imposed upon a conviction under subdivisions (d) and (e), the court shall consider all relevant facts, including, but not limited to, the following:

(1) Whether the neglect exposed the elder or dependent adult to the risk of death or serious physical harm.

(2) Whether the neglect had a direct or immediate relationship to the health, safety, or security of the elder or dependent adult.

(3) The presence or absence of good faith efforts by the defendant to prevent the neglect.

(g) Any caretaker of an elder or a dependent adult who violates any provision of law proscribing theft or embezzlement, with respect to the property of that elder or dependent adult, is punishable by imprisonment in a county jail not exceeding one year, or in the state prison for two, three, or four years when the money, labor, or real or personal property taken is of a value exceeding four hundred dollars ($400), and by a fine not exceeding one thousand dollars ($1,000), by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, when the money, labor, or real or personal property taken is of a value not exceeding four hundred dollars ($400).

(h) Any person who is not a caretaker who violates any provision of law proscribing theft or embezzlement, with respect to the property of an elder or dependent adult, and who knows or reasonably should know that the victim is an elder or dependent adult, is punishable by imprisonment in a county jail not exceeding one year, or in the state prison for two, three, or four years, when the

money, labor, or real or personal property taken is of a value exceeding four hundred dollars ($400); and by a fine not exceeding one thousand dollars ($1,000), by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, when the money, labor, or real or personal property taken is of a value not exceeding four hundred dollars ($400).

(i) Any person who commits the false imprisonment of an elder or dependent adult by the use of violence, menace, fraud, or deceit is punishable by imprisonment in the state prison for two, three, or four years.

(j) As used in this section, "neglect" means that a caretaker of an elder or a dependent adult either acted, or failed to act, in a manner which constitutes a reckless, gross, or culpable departure from an ordinary standard of care.

(k) As used in subdivisions (d) and (e), "willfully" when applied to the intent with which an act is done or omitted, implies simply a purpose or willingness to commit the act, or failure to act, in a manner which constitutes a reckless, gross, or culpable departure from an ordinary standard of care. It does not require any specific intent to violate any law or to injure another or to acquire any advantage.

(*l*) As used in this section, "elder" means any person who is 65 years of age or older.

(m) As used in this section, "dependent adult" means any person who is between the ages of 18 and 64, who has physical or mental limitations which restrict his or her ability to carry out normal activities or to protect his or her rights, including, but not limited to, persons who have physical or developmental disabilities or whose physical or mental abilities have diminished because of age. "Dependent adult" includes any person between the ages of 18 and 64 who is admitted as an inpatient to a 24-hour health facility, as defined in Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code.

(n) As used in this section, "caretaker" means any person who has the care, custody, or control of, or who stands in a position of trust with, an elder or a dependent adult.

(o) Nothing in this section shall preclude prosecution under both this section and Section 187 or 12022.7 or any other provision of law. However, a person shall not receive an additional term of imprisonment under both paragraphs (2) and (3) of subdivision (b) for any single offense, nor shall a person receive an additional term of imprisonment under both Section 12022.7 and paragraph (2) or (3) of subdivision (b) for any single offense.

SEC. 8. Section 422.75 of the Penal Code is amended to read:

422.75. (a) Except in the case of a person punished under Section 422.7, a person who commits a felony or attempts to commit a felony because of the victim's race, color, religion, nationality, country of origin, ancestry, disability, or sexual orientation, or because he or she perceives that the victim has one or more of those characteristics,

shall receive an additional term of one, two, or three years in the state prison, at the court's discretion.

(b) Except in the case of a person punished under Section 422.7 or subdivision (a) of this section, any person who commits a felony or attempts to commit a felony against the property of a public agency or private institution, including a school, educational facility, library or community center, meeting hall, place of worship, or offices of an advocacy group, or the grounds adjacent to, owned, or rented by the public agency or private institution, because the property of the public agency or private institution is identified or associated with a person or group of an identifiable race, color, religion, nationality, country of origin, ancestry, gender, disability, or sexual orientation, shall receive an additional term of one, two, or three years in the state prison, at the court's discretion.

(c) Except in the case of a person punished under Section 422.7 or subdivision (a) or (b) of this section, any person who commits a felony, or attempts to commit a felony, because of the victim's race, color, religion, nationality, country of origin, ancestry, gender, disability, or sexual orientation, or because he or she perceives that the victim has one or more of those characteristics, and who voluntarily acted in concert with another person, either personally or by aiding and abetting another person, shall receive an additional two, three, or four years in the state prison, at the court's discretion.

(d) For the purpose of imposing an additional term under subdivision (a) or (c), it shall be a factor in aggravation that the defendant personally used a firearm in the commission of the offense. Nothing in this subdivision shall preclude a court from also imposing a sentence enhancement pursuant to Section 12022.5, 12022.53, or 12022.55, or any other law.

(e) A person who is punished pursuant to this section also shall receive an additional term of one year in the state prison for each prior felony conviction on charges brought and tried separately in which it was found by the trier of fact or admitted by the defendant that the crime was committed because of the victim's race, color, religion, nationality, country of origin, ancestry, disability, or sexual orientation, or that the crime was committed because the defendant perceived that the victim had one or more of those characteristics. This additional term shall only apply where a sentence enhancement is not imposed pursuant to Section 667 or 667.5.

(f) Any additional term authorized by this section shall not be imposed unless the allegation is charged in the accusatory pleading and admitted by the defendant or found to be true by the trier of fact.

(g) Any additional term imposed pursuant to this section shall be in addition to any other punishment provided by law.

(h) Notwithstanding any other provision of law, the court may strike any additional term imposed by this section if the court determines that there are mitigating circumstances and states on the record the reasons for striking the additional punishment.

SEC. 8.5. Section 422.75 of the Penal Code is amended to read:

422.75. (a) Except in the case of a person punished under Section 422.7, a person who commits a felony or attempts to commit a felony because of the victim's race, color, religion, nationality, country of origin, ancestry, disability, gender, or sexual orientation, or because he or she perceives that the victim has one or more of those characteristics, shall receive an additional term of one, two, or three years in the state prison, at the court's discretion.

(b) Except in the case of a person punished under Section 422.7 or subdivision (a) of this section, any person who commits a felony or attempts to commit a felony against the property of a public agency or private institution, including a school, educational facility, library or community center, meeting hall, place of worship, or offices of an advocacy group, or the grounds adjacent to, owned, or rented by the public agency or private institution, because the property of the public agency or private institution is identified or associated with a person or group of an identifiable race, color, religion, nationality, country of origin, ancestry, gender, disability, or sexual orientation, shall receive an additional term of one, two, or three years in the state prison, at the court's discretion.

(c) Except in the case of a person punished under Section 422.7 or subdivision (a) or (b) of this section, any person who commits a felony, or attempts to commit a felony, because of the victim's race, color, religion, nationality, country of origin, ancestry, gender, disability, or sexual orientation, or because he or she perceives that the victim has one or more of those characteristics, and who voluntarily acted in concert with another person, either personally or by aiding and abetting another person, shall receive an additional two, three, or four years in the state prison, at the court's discretion.

(d) For the purpose of imposing an additional term under subdivision (a) or (c), it shall be a factor in aggravation that the defendant personally used a firearm in the commission of the offense. Nothing in this subdivision shall preclude a court from also imposing a sentence enhancement pursuant to Section 12022.5, 12022.53, or 12022.55, or any other law.

(e) A person who is punished pursuant to this section also shall receive an additional term of one year in the state prison for each prior felony conviction on charges brought and tried separately in which it was found by the trier of fact or admitted by the defendant that the crime was committed because of the victim's race, color, religion, nationality, country of origin, ancestry, disability, gender, or sexual orientation, or that the crime was committed because the defendant perceived that the victim had one or more of those characteristics. This additional term shall only apply where a sentence enhancement is not imposed pursuant to Section 667 or 667.5.

(f) Any additional term authorized by this section shall not be imposed unless the allegation is charged in the accusatory pleading and admitted by the defendant or found to be true by the trier of fact.

(g) Any additional term imposed pursuant to this section shall be in addition to any other punishment provided by law.

(h) Notwithstanding any other provision of law, the court may strike any additional term imposed by this section if the court determines that there are mitigating circumstances and states on the record the reasons for striking the additional punishment.

(i) (1) "Because of" means that the bias motivation must be a cause in fact of the offense, whether or not other causes also exist. When multiple concurrent motives exist, the prohibited bias must be a substantial factor in bringing about the particular result.

(2) This subdivision does not constitute a change in, but is declaratory of, existing law under In Re M.S. (1995) 10 Cal. 4th 698 and People v. Superior Court (Aishman)(1995) 10 Cal. 4th 735.

SEC. 9. Section 667.61 of the Penal Code is amended to read:

667.61. (a) A person who is convicted of an offense specified in subdivision (c) under one or more of the circumstances specified in subdivision (d) or under two or more of the circumstances specified in subdivision (e) shall be punished by imprisonment in the state prison for life and shall not be eligible for release on parole for 25 years except as provided in subdivision (j).

(b) Except as provided in subdivision (a), a person who is convicted of an offense specified in subdivision (c) under one of the circumstances specified in subdivision (e) shall be punished by imprisonment in the state prison for life and shall not be eligible for release on parole for 15 years except as provided in subdivision (j).

(c) This section shall apply to any of the following offenses:

(1) A violation of paragraph (2) of subdivision (a) of Section 261.

(2) A violation of paragraph (1) of subdivision (a) of Section 262.

(3) A violation of Section 264.1.

(4) A violation of subdivision (b) of Section 288.

(5) A violation of subdivision (a) of Section 289.

(6) Sodomy or oral copulation in violation of Section 286 or 288a by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

(7) A violation of subdivision (a) of Section 288, unless the defendant qualifies for probation under subdivision (c) of Section 1203.066.

(d) The following circumstances shall apply to the offenses specified in subdivision (c):

(1) The defendant has been previously convicted of an offense specified in subdivision (c), including an offense committed in another jurisdiction that includes all of the elements of an offense specified in subdivision (c).

(2) The defendant kidnapped the victim of the present offense and the movement of the victim substantially increased the risk of

harm to the victim over and above that level of risk necessarily inherent in the underlying offense in subdivision (c).

(3) The defendant inflicted aggravated mayhem or torture on the victim or another person in the commission of the present offense in violation of Section 205 or 206.

(4) The defendant committed the present offense during the commission of a burglary, as defined in subdivision (a) of Section 460, with intent to commit an offense specified in subdivision (c).

(e) The following circumstances shall apply to the offenses specified in subdivision (c):

(1) Except as provided in paragraph (2) of subdivision (d), the defendant kidnapped the victim of the present offense in violation of Section 207, 209, or 209.5.

(2) Except as provided in paragraph (4) of subdivision (d), the defendant committed the present offense during the commission of a burglary, as defined in subdivision (a) of Section 460, or during the commission of a burglary of a building, including any commercial establishment, which was then closed to the public, in violation of Section 459.

(3) The defendant personally inflicted great bodily injury on the victim or another person in the commission of the present offense in violation of Section 12022.53, 12022.7, or 12022.8.

(4) The defendant personally used a dangerous or deadly weapon or firearm in the commission of the present offense in violation of Section 12022, 12022.3, 12022.5, or 12022.53.

(5) The defendant has been convicted in the present case or cases of committing an offense specified in subdivision (c) against more than one victim.

(6) The defendant engaged in the tying or binding of the victim or another person in the commission of the present offense.

(7) The defendant administered a controlled substance to the victim by force, violence, or fear in the commission of the present offense in violation of Section 12022.75.

(f) If only the minimum number of circumstances specified in subdivision (d) or (e) which are required for the punishment provided in subdivision (a) or (b) to apply have been pled and proved, that circumstance or those circumstances shall be used as the basis for imposing the term provided in subdivision (a) or (b) rather than being used to impose the punishment authorized under any other law, unless another law provides for a greater penalty. However, if any additional circumstance or circumstances specified in subdivision (d) or (e) have been pled and proved, the minimum number of circumstances shall be used as the basis for imposing the term provided in subdivision (a), and any other additional circumstance or circumstances shall be used to impose any punishment or enhancement authorized under any other law. Notwithstanding any other law, the court shall not strike any of the circumstances specified in subdivision (d) or (e).

(g) The term specified in subdivision (a) or (b) shall be imposed on the defendant once for any offense or offenses committed against a single victim during a single occasion. If there are multiple victims during a single occasion, the term specified in subdivision (a) or (b) shall be imposed on the defendant once for each separate victim. Terms for other offenses committed during a single occasion shall be imposed as authorized under any other law, including Section 667.6, if applicable.

(h) Probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, any person who is subject to punishment under this section for any offense specified in paragraphs (1) to (6), inclusive, of subdivision (c).

(i) For the penalties provided in this section to apply, the existence of any fact required under subdivision (d) or (e) shall be alleged in the accusatory pleading and either admitted by the defendant in open court or found to be true by the trier of fact.

(j) Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall apply to reduce the minimum term of 25 years in the state prison imposed pursuant to subdivision (a) or 15 years in the state prison imposed pursuant to subdivision (b). However, in no case shall the minimum term of 25 or 15 years be reduced by more than 15 percent for credits granted pursuant to Section 2933, 4019, or any other law providing for conduct credit reduction. In no case shall any person who is punished under this section be released on parole prior to serving at least 85 percent of the minimum term of 25 or 15 years in the state prison.

SEC. 10. Section 667.7 of the Penal Code is amended to read:

667.7. (a) Any person convicted of a felony in which the person inflicted great bodily injury as provided in Section 12022.53 or 12022.7, or personally used force which was likely to produce great bodily injury, who has served two or more prior separate prison terms as defined in Section 667.5 for the crime of murder; attempted murder; voluntary manslaughter; mayhem; rape by force, violence, or fear of immediate and unlawful bodily injury on the victim or another person; oral copulation by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person; sodomy by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person; lewd acts on a child under the age of 14 years by use of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person; a violation of subdivision (a) of Section 289 where the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person; kidnapping as punished in former subdivision (d) of Section 208, or for ransom, extortion, or robbery; robbery involving the use of force or a deadly weapon; assault with intent to commit murder; assault with a deadly weapon; carjacking involving the use of a deadly weapon; assault with

intent to commit murder; assault with a deadly weapon; assault with a force likely to produce great bodily injury; assault with intent to commit rape, sodomy, oral copulation, penetration of a vaginal or anal opening in violation of Section 289, or lewd and lascivious acts on a child; arson of a structure; escape or attempted escape by an inmate with force or violence in violation of subdivision (a) of Section 4530, or of Section 4532; exploding a device with intent to murder in violation of Section 12308; exploding a destructive device which causes bodily injury in violation of Section 12309, or mayhem or great bodily injury in violation of Section 12310; exploding a destructive device with intent to injure, intimidate, or terrify, in violation of Section 12303.3; any felony in which the person inflicted great bodily injury as provided in Section 12022.53 or 12022.7; or any felony punishable by death or life imprisonment with or without the possibility of parole is a habitual offender and shall be punished as follows:

(1) A person who served two prior separate prison terms shall be punished by imprisonment in the state prison for life and shall not be eligible for release on parole for 20 years, or the term determined by the court pursuant to Section 1170 for the underlying conviction, including any enhancement applicable under Chapter 4.5 (commencing with Section 1170) of Title 7 of Part 2, or any period prescribed by Section 190 or 3046, whichever is greatest. Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall apply to reduce any minimum term in a state prison imposed pursuant to this section, but the person shall not otherwise be released on parole prior to that time.

(2) Any person convicted of a felony specified in this subdivision who has served three or more prior separate prison terms, as defined in Section 667.5, for the crimes specified in subdivision (a) of this section shall be punished by imprisonment in the state prison for life without the possibility of parole.

(b) This section shall not prevent the imposition of the punishment of death or imprisonment for life without the possibility of parole. No prior prison term shall be used for this determination which was served prior to a period of 10 years in which the person remained free of both prison custody and the commission of an offense which results in a felony conviction. As used in this section, a commitment to the Department of the Youth Authority after conviction for a felony shall constitute a prior prison term. The term imposed under this section shall be imposed only if the prior prison terms are alleged under this section in the accusatory pleading, 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 a plea of guilty or nolo contendere or by a trial by the court sitting without a jury.

SEC. 11. Section 1170.11 of the Penal Code is amended to read:

1170.11. As used in Section 1170.1, the term "specific enhancement" includes, but is not limited to, the enhancements provided in Sections 186.10, 186.11, 186.22, 273.4, 289.5, 290, 290.4, 347, and 368, subdivisions (a), (b), and (c) of Section 422.75, paragraphs (2), (3), (4), and (5) of subdivision (a) of Section 451.1, paragraphs (2), (3), and (4) of subdivision (a) of Section 452.1, Sections 593a, 600, 667.8, 667.83, 667.85, 667.9, 667.10, 667.15, 667.16, 674, 12021.5, 12022, 12022.2, 12022.3, 12022.4, 12022.5, 12022.53, 12022.55, 12022.6, 12022.7, 12022.75, 12022.8, 12022.85, 12022.9, 12022.95, 12072, and 12280 of this code, and in Sections 1522.01 and 11353.1, subdivision (b) of Section 11353.4, Sections 11353.6, 11356.5, 11370.4, 11379.7, 11379.8, 11379.9, and 11380.1 of the Health and Safety Code, and in Sections 20001 and 23182 of the Vehicle Code.

SEC. 11.5. Section 1170.11 of the Penal Code is amended to read:

1170.11. As used in Section 1170.1, the term "specific enhancement" includes, but is not limited to, the enhancements provided in Sections 186.10, 186.11, 186.22, 273.4, 289.5, 290, 290.4, 347, and 368, subdivisions (a), (b), and (c) of Section 422.75, paragraphs (2), (3), (4), and (5) of subdivision (a) of Section 451.1, paragraphs (2), (3), and (4) of subdivision (a) of Section 452.1, subdivision (g) of Section 550, Sections 593a, 600, 667.8, 667.83, 667.85, 667.9, 667.10, 667.15, 667.16, 674, 12021.5, 12022, 12022.2, 12022.3, 12022.4, 12022.5, 12022.53, 12022.55, 12022.6, 12022.7, 12022.75, 12022.8, 12022.85, 12022.9, 12022.95, 12072, and 12280 of this code, and in Sections 1522.01 and 11353.1, subdivision (b) of Section 11353.4, Sections 11353.6, 11356.5, 11370.4, 11379.7, 11379.8, 11379.9, and 11380.1 of the Health and Safety Code, and in Sections 20001 and 23182 of the Vehicle Code.

SEC. 12. Section 1174.4 of the Penal Code is amended to read:

1174.4. (a) Persons eligible for participation in this alternative sentencing program shall meet all of the following criteria:

(1) Pregnant women with an established history of substance abuse, or pregnant or parenting women with an established history of substance abuse who have one or more children under six years old at the time of entry into the program. For women with children, at least one eligible child shall reside with the mother in the facility.

(2) Never served a prior prison term for, nor been convicted in the present proceeding of, committing or attempting to commit, any of the following offenses:

(A) Murder or voluntary manslaughter.

(B) Mayhem.

(C) Rape.

(D) Kidnapping.

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

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

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

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

(I) Any felony in which the defendant inflicts great bodily injury on any person, other than an accomplice, that has been charged and proved as provided for in Section 12022.53, 12022.7 or 12022.9, or any felony in which the defendant uses a firearm, as provided in Section 12022.5, 12022.53, or 12022.55, in which the use has been charged and proved.

(J) Robbery.

(K) Any robbery perpetrated in an inhabited dwelling house or trailer coach as defined in the Vehicle Code, or in the inhabited portion of any other building, wherein it is charged and proved that the defendant personally used a deadly or dangerous weapon, as provided in subdivision (b) of Section 12022, in the commission of that robbery.

(L) Arson in violation of subdivision (a) of Section 451.

(M) Penetration by a foreign object in violation of subdivision (a) of Section 289 if 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.

(N) Rape or penetration of genital or anal openings by a foreign object in concert, in violation of Section 264.1.

(O) Continual sexual abuse of a child in violation of Section 288.5.

(P) Assault with intent to commit mayhem, rape, sodomy, oral copulation, rape in concert, with another, lascivious acts upon a child, or penetration by a foreign object.

(Q) Assault with a deadly weapon or with force likely to produce great bodily injury in violation of subdivision (a) of Section 245.

(R) Any violent felony defined in Section 667.5.

(S) A violation of Section 12022.

(T) A violation of Section 12308.

(U) Burglary of the first degree.

(V) A violation of Section 11351, 11351.5, 11352, 11353, 11358, 11359, 11360, 11370.1, 11370.6, 11378, 11378.5, 11379, 11379.5, 11379.6, 11380, or 11383 of the Health and Safety Code.

(3) Has not been sentenced to state prison for a term exceeding 36 months.

(b) Prior to sentencing, if the court proposes to give consideration to a placement, the court shall consider a written evaluation by the probation department, which shall include the following:

(1) Whether the defendant is eligible for participation pursuant to this section.

(2) Whether participation by the defendant and her eligible children is deemed to be in the best interests of the children.

(3) Whether the defendant is amenable to treatment for substance abuse and would benefit from participation in the program.

(4) Whether the program is deemed to be in the best interests of an eligible child of the defendant, as determined by a representative of the appropriate child welfare services agency of the county if the child is a dependent child of the juvenile court pursuant to Section 300 of the Welfare and Institutions Code.

(c) The district attorney shall make a recommendation to the court as to whether or not the defendant would benefit from the program, which the court shall consider in making its decision. If the court's decision is without the concurrence of the district attorney, the court shall specify its reasons in writing and enter them into the record.

(d) If the court determines that the defendant may benefit from participation in this program, the court may impose a state prison sentence with the recommendation that the defendant participate in the program pursuant to this chapter. The court shall notify the department within 48 hours of imposition of this sentence.

(e) The Director of Corrections shall consider the court's recommendation in making a determination on the inmate's placement in the program.

(f) Women accepted for the program by the Director of Corrections shall be delivered by the county, pursuant to Section 1202a, to the facility selected by the department. Before the director accepts a woman for the program, the county shall provide to the director the necessary information to determine her eligibility and appropriate placement status. Priority for services and aftercare shall be given to inmates who are incarcerated in a county, or adjacent to a county, in which a program facility is located.

(g) Prior to being admitted to the program, each participant shall voluntarily sign an agreement specifying the terms and conditions of participation in the program.

(h) The department may refer inmates back to the sentencing court if the department determines that an eligible inmate has not been recommended for the program. The department shall refer the inmate to the court by an evaluative report so stating the department's assessment of eligibility, and requesting a recommendation by the court.

(i) Women who successfully complete the program, including the minimum of one year of transition services under intensive parole supervision, shall be discharged from parole. Women who do not successfully complete the program shall be returned to the state prison where they shall serve their original sentences. These persons shall receive full credit against their original sentences for the time served in the program, pursuant to Section 2933.

SEC. 13. 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 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 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, or trailer coach as defined by the Vehicle Code, or 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 attempt to commit a crime listed in this subdivision other than an assault; and (29) 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. 13.5. 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 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. 14. Section 1269b of the Penal Code is amended to read:

1269b. (a) The officer in charge of a jail where an arrested person is held in custody, an officer of a sheriff's department or police department of a city who is in charge of a jail or employed at a fixed police or sheriff's facility and is acting under an agreement with the agency which keeps the jail wherein an arrested person is held in custody, an employee of a sheriff's department or police department of a city who is assigned by such department to collect bail, the clerk of the justice or municipal court of the judicial district in which the offense was alleged to have been committed, and the clerk of the superior court in which the case against the defendant is pending may approve and accept bail in the amount fixed by the warrant of arrest, schedule of bail, or order admitting to bail in cash or surety bond executed by a certified, admitted surety insurer as provided in the Insurance Code, to issue and sign an order for the release of the arrested person, and to set a time and place for the appearance of the arrested person before the appropriate court and give notice thereof.

(b) If a defendant has appeared before a judge of the court on the charge contained in the complaint, indictment, or information, the bail shall be in the amount fixed by the judge at the time of the appearance; if that appearance has not been made, the bail shall be in the amount fixed in the warrant of arrest or, if no warrant of arrest has been issued, the amount of bail shall be pursuant to the uniform countywide schedule of bail for the county in which the defendant is required to appear, previously fixed and approved as provided in subdivisions (c) and (d).

(c) It is the duty of the superior, municipal and justice court judges in each county to prepare, adopt, and annually revise, by a majority vote, at a meeting called by the presiding judge of the superior court of the county, a uniform countywide schedule of bail for all bailable felony offenses.

In adopting a uniform countywide schedule of bail for all bailable offenses the judges shall consider the seriousness of the offense charged. In considering the seriousness of the offense charged the judges shall assign an additional amount of required bail for each aggravating or enhancing factor chargeable in the complaint, including, but not limited to, additional bail for charges alleging facts which would bring a person within any of the following sections: Section 667.5, 667.51, 667.6, 667.8, 667.85, 667.9, 667.10, 12022, 12022.1, 12022.2, 12022.3, 12022.4, 12022.5, 12022.53, 12022.6, 12022.7, 12022.8, or 12022.9 of the Penal Code, or Section 11356.5, 11370.2, or 11370.4 of the Health and Safety Code.

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 shall assign an additional amount of required bail for offenses involving large quantities of controlled substances.

(d) The municipal and justice court judges in each county shall prepare, adopt, and annually revise, by a majority vote, at a meeting called by the presiding judge of the municipal court or the senior judge of the justice court at each county seat, a uniform, countywide schedule of bail for all misdemeanor and infraction offenses except Vehicle Code infractions. The penalty schedule for infraction violations of the Vehicle Code shall be established by the Judicial Council in accordance with Section 40310 of the Vehicle Code.

(e) Each countywide bail schedule shall contain a list of the offenses and the amounts of bail applicable thereto as the judges determine to be appropriate. If the schedules do not list all offenses specifically, they shall contain a general clause for designated amounts of bail as the judges of the county determine to be appropriate for all the offenses not specifically listed in the schedules. A copy of the countywide bail schedule shall be sent to the officer in charge of the county jail, to the officer in charge of each city jail within the county, to each superior, municipal and justice court judge and commissioner in the county, and to the Judicial Council.

(f) Upon posting bail the defendant or arrested person shall be discharged from custody as to the offense on which the bail is posted.

All money and surety bonds so deposited with an officer authorized to receive bail shall be transmitted immediately to the judge or clerk of the court by which the order was made or warrant issued or bail schedule fixed. If, in the case of felonies, an indictment is filed, the judge or clerk of the court shall transmit all of the money and surety bonds to the county clerk.

(g) If a defendant or arrested person so released fails to appear at the time and in the court so ordered upon his or her release from custody, Sections 1305 and 1306 apply.

SEC. 14.5. Section 1269b of the Penal Code is amended to read:

1269b. (a) The officer in charge of a jail where an arrested person is held in custody, an officer of a sheriff's department or police department of a city who is in charge of a jail or employed at a fixed police or sheriff's facility and is acting under an agreement with the agency which keeps the jail wherein an arrested person is held in custody, an employee of a sheriff's department or police department of a city who is assigned by such department to collect bail, the clerk of the municipal court of the judicial district in which the offense was alleged to have been committed, and the clerk of the superior court in which the case against the defendant is pending may approve and accept bail in the amount fixed by the warrant of arrest, schedule of bail, or order admitting to bail in cash or surety bond executed by a certified, admitted surety insurer as provided in the Insurance Code,

to issue and sign an order for the release of the arrested person, and to set a time and place for the appearance of the arrested person before the appropriate court and give notice thereof.

(b) If a defendant has appeared before a judge of the court on the charge contained in the complaint, indictment, or information, the bail shall be in the amount fixed by the judge at the time of the appearance; if that appearance has not been made, the bail shall be in the amount fixed in the warrant of arrest or, if no warrant of arrest has been issued, the amount of bail shall be pursuant to the uniform countywide schedule of bail for the county in which the defendant is required to appear, previously fixed and approved as provided in subdivisions (c) and (d).

(c) It is the duty of the superior and municipal court judges in each county to prepare, adopt, and annually revise, by a majority vote, at a meeting called by the presiding judge of the superior court of the county, a uniform countywide schedule of bail for all bailable felony offenses.

In adopting a uniform countywide schedule of bail for all bailable offenses the judges shall consider the seriousness of the offense charged. In considering the seriousness of the offense charged the judges shall assign an additional amount of required bail for each aggravating or enhancing factor chargeable in the complaint, including, but not limited to, additional bail for charges alleging facts which would bring a person within any of the following sections: Section 667.5, 667.51, 667.6, 667.8, 667.85, 667.9, 667.10, 12022, 12022.1, 12022.2, 12022.3, 12022.4, 12022.5, 12022.53, 12022.6, 12022.7, 12022.8, or 12022.9 of the Penal Code, or Section 11356.5, 11370.2, or 11370.4 of the Health and Safety Code.

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 shall assign an additional amount of required bail for offenses involving large quantities of controlled substances.

(d) The municipal court judges in each county, at a meeting called by the presiding judge of the municipal court at each county seat, or the superior court judges in each county in which there is no municipal court, at a meeting called by the presiding judge of the superior court, shall prepare, adopt, and annually revise, by a majority vote, a uniform, countywide schedule of bail for all misdemeanor and infraction offenses except Vehicle Code infractions. The penalty schedule for infraction violations of the Vehicle Code shall be established by the Judicial Council in accordance with Section 40310 of the Vehicle Code.

(e) Each countywide bail schedule shall contain a list of the offenses and the amounts of bail applicable thereto as the judges determine to be appropriate. If the schedules do not list all offenses specifically, they shall contain a general clause for designated amounts of bail as the judges of the county determine to be

appropriate for all the offenses not specifically listed in the schedules. A copy of the countywide bail schedule shall be sent to the officer in charge of the county jail, to the officer in charge of each city jail within the county, to each superior and municipal court judge and commissioner in the county, and to the Judicial Council.

(f) Upon posting bail the defendant or arrested person shall be discharged from custody as to the offense on which the bail is posted.

All money and surety bonds so deposited with an officer authorized to receive bail shall be transmitted immediately to the judge or clerk of the court by which the order was made or warrant issued or bail schedule fixed. If, in the case of felonies, an indictment is filed, the judge or clerk of the court shall transmit all of the money and surety bonds to the county clerk.

(g) If a defendant or arrested person so released fails to appear at the time and in the court so ordered upon his or her release from custody, Sections 1305 and 1306 apply.

SEC. 15. Section 2933.5 of the Penal Code is amended to read:

2933.5. (a) (1) Notwithstanding any other provision of law, every person who is convicted of any felony offense listed in paragraph (2), and who previously has been convicted two or more times, on charges separately brought and tried, and who previously has served two or more separate prior prison terms, as defined in subdivision (g) of Section 667.5, of any offense or offenses listed in paragraph (2), shall be ineligible to earn credit on his or her term of imprisonment pursuant to this chapter.

(2) As used in this subdivision, "felony offense" includes any of the following:

(A) Murder, as defined in Sections 187 and 189.

(B) Voluntary manslaughter, as defined in subdivision (a) of Section 192.

(C) Mayhem as defined in Section 203.

(D) Aggravated mayhem, as defined in Section 205.

(E) Kidnapping, as defined in Section 207, 209, or 209.5.

(F) Assault with vitriol, corrosive acid, or caustic chemical of any nature, as described in Section 244.

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

(H) Sodomy by means of force, violence, duress, menace or fear of immediate and unlawful bodily injury on the victim or another person, as described in subdivision (c) of Section 286.

(I) Sodomy while voluntarily acting in concert, as described in subdivision (d) of Section 286.

(J) Lewd or lascivious acts on a child under the age of 14 years, as described in subdivision (b) of Section 288.

(K) Oral copulation by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, as described in subdivision (c) of Section 288a.

(L) Continuous sexual abuse of a child, as described in Section 288.5.

(M) Penetration by foreign object, as described in subdivision (a) of Section 289.

(N) Exploding a destructive device or explosive with intent to injure, as described in Section 12303.3, with intent to murder, as described in Section 12308, or resulting in great bodily injury or mayhem, as described in Section 12309.

(O) Any felony in which the defendant personally inflicted great bodily injury, as provided in Section 12022.53 or 12022.7.

(b) A prior conviction of an offense listed in subdivision (a) shall include a conviction in another jurisdiction for an offense which includes all of the elements of the particular felony as defined under California law.

(c) This section shall apply whenever the present felony is committed on or after the effective date of this section, regardless of the date of commission of the prior offense or offenses resulting in credit-earning ineligibility.

(d) This section shall be in addition to, and shall not preclude the imposition of, any applicable sentence enhancement terms, or probation ineligibility and habitual offender provisions authorized under any other section.

SEC. 16. Section 2962 of the Penal Code is amended to read:

2962. As a condition of parole, a prisoner who meets the following criteria shall be required to be treated by the State Department of Mental Health, and the State Department of Mental Health shall provide the necessary treatment:

(a) The prisoner has a severe mental disorder that is not in remission or cannot be kept in remission without treatment.

The term "severe mental disorder" means an illness or disease or condition that substantially impairs the person's thought, perception of reality, emotional process, or judgment; or which grossly impairs behavior; or that demonstrates evidence of an acute brain syndrome for which prompt remission, in the absence of treatment, is unlikely. The term "severe mental disorder" as used in this section does not include a personality or adjustment disorder, epilepsy, mental retardation or other developmental disabilities, or addiction to or abuse of intoxicating substances.

The term "remission" means a finding that the overt signs and symptoms of the severe mental disorder are controlled either by psychotropic medication or psychosocial support. A person "cannot be kept in remission without treatment" if during the year prior to the question being before the Board of Prison Terms or a trial court, he or she has been in remission and he or she has been physically violent, except in self-defense, or he or she has made a serious threat of substantial physical harm upon the person of another so as to cause the target of the threat to reasonably fear for his or her safety or the safety of his or her immediate family, or he or she has intentionally

caused property damage, or he or she has not voluntarily followed the treatment plan. In determining if a person has voluntarily followed the treatment plan, the standard shall be whether the person has acted as a reasonable person would in following the treatment plan.

(b) The severe mental disorder was one of the causes of or was an aggravating factor in the commission of a crime for which the prisoner was sentenced to prison.

(c) The prisoner has been in treatment for the severe mental disorder for 90 days or more within the year prior to the prisoner's parole or release.

(d) (1) Prior to release on parole, the person in charge of treating the prisoner and a practicing psychiatrist or psychologist from the State Department of Mental Health have evaluated the prisoner at a facility of the Department of Corrections, and a chief psychiatrist of the Department of Corrections has certified to the Board of Prison Terms that the prisoner has a severe mental disorder, that the disorder is not in remission, or cannot be kept in remission without treatment, that the severe mental disorder was one of the causes or was an aggravating factor in the prisoner's criminal behavior, that the prisoner has been in treatment for the severe mental disorder for 90 days or more within the year prior to his or her parole release day, and that by reason of his or her severe mental disorder the prisoner represents a substantial danger of physical harm to others. For prisoners being treated by the State Department of Mental Health pursuant to Section 2684, the certification shall be by a chief psychiatrist of the Department of Corrections, and the evaluation shall be done at a state hospital by the person at the state hospital in charge of treating the prisoner and a practicing psychiatrist or psychologist from the Department of Corrections.

(2) If the professionals doing the evaluation pursuant to paragraph (1) do not concur that (A) the prisoner has a severe mental disorder, (B) that the disorder is not in remission or cannot be kept in remission without treatment, or (C) that the severe mental disorder was a cause of, or aggravated, the prisoner's criminal behavior, and a chief psychiatrist has certified the prisoner to the Board of Prison Terms pursuant to this paragraph, then the Board of Prison Terms shall order a further examination by two independent professionals, as provided for in Section 2978.

(3) Only if both independent professionals who evaluate the prisoner pursuant to paragraph (2) concur with the chief psychiatrist's certification of the issues described in paragraph (2), shall this subdivision be applicable to the prisoner. The professionals appointed pursuant to Section 2978 shall inform the prisoner that the purpose of their examination is not treatment but to determine if the prisoner meets certain criteria to be involuntarily treated as a mentally disordered offender. It is not required that the prisoner appreciate or understand that information.

(e) The crime referred to in subdivision (b) meets both of the following criteria:

(1) The defendant received a determinate sentence pursuant to Section 1170 for the crime.

(2) The crime is one of the following:

(A) Voluntary manslaughter.

(B) Mayhem.

(C) Kidnapping in violation of Section 207.

(D) Any robbery wherein it was charged and proved that the defendant personally used a deadly or dangerous weapon, as provided in subdivision (b) of Section 12022, in the commission of that robbery.

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

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

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

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

(I) Lewd acts on a child under the age of 14 years in violation of Section 288.

(J) Continuous sexual abuse in violation of Section 288.5.

(K) The offense described in subdivision (a) of Section 289 where the act was 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.

(L) Arson in violation of subdivision (a) of Section 451.

(M) Any felony in which the defendant used a firearm which use was charged and proved as provided in Section 12022.5, 12022.53, or 12022.55.

(N) A violation of Section 12308.

(O) Attempted murder.

(P) A crime not enumerated in subparagraph (A) to (O), inclusive, in which the prisoner used force or violence, or caused serious bodily injury as defined in paragraph (4) of subdivision (f) of Section 243.

(f) As used in this chapter, "substantial danger of physical harm" does not require proof of a recent overt act.

SEC. 17. Section 3003 of the Penal Code is amended to read:

3003. (a) Except as otherwise provided in this section, an inmate who is released on parole shall be returned to the county that was the last legal residence of the inmate prior to his or her incarceration.

For purposes of this subdivision, "last legal residence" shall not be construed to mean the county wherein the inmate committed an offense while confined in a state prison or local jail facility or while confined for treatment in a state hospital.

(b) Notwithstanding subdivision (a), an inmate may be returned to another county if that would be in the best interests of the public. If the Board of Prison Terms setting the conditions of parole for inmates sentenced pursuant to subdivision (b) of Section 1168, or the Department of Corrections setting the conditions of parole for inmates sentenced pursuant to Section 1170, decides on a return to another county, it shall place its reasons in writing in the parolee's permanent record and include these reasons in the notice to the sheriff or chief of police pursuant to Section 3058.6. In making its decision, the paroling authority shall consider, among others, the following factors, giving the greatest weight to the protection of the victim and the safety of the community:

(1) The need to protect the life or safety of a victim, the parolee, a witness, or any other person.

(2) Public concern that would reduce the chance that the inmate's parole would be successfully completed.

(3) The verified existence of a work offer, or an educational or vocational training program.

(4) The existence of family in another county with whom the inmate has maintained strong ties and whose support would increase the chance that the inmate's parole would be successfully completed.

(5) The lack of necessary outpatient treatment programs for parolees receiving treatment pursuant to Section 2960.

(c) The Department of Corrections, in determining an out-of-county commitment, shall give priority to the safety of the community and any witnesses and victims.

(d) In making its decision about an inmate who participated in a joint venture program pursuant to Article 1.5 (commencing with Section 2717.1) of Chapter 5, the paroling authority shall give serious consideration to releasing him or her to the county where the joint venture program employer is located if that employer states to the paroling authority that he or she intends to employ the inmate upon release.

(e) (1) The following information, if available, shall be released by the Department of Corrections to local law enforcement agencies regarding a paroled inmate who is released in their jurisdictions:

(A) Last, first, and middle name.

(B) Birth date.

(C) Sex, race, height, weight, and hair and eye color.

(D) Date of parole and discharge.

(E) Registration status, if the inmate is required to register as a result of a controlled substance, sex, or arson offense.

(F) California Criminal Information Number, FBI number, social security number, and driver's license number.

(G) County of commitment.

(H) A description of scars, marks, and tattoos on the inmate.

(I) Offense or offenses for which the inmate was convicted that resulted in parole in this instance.

(J) Address, including all of the following information:

(i) Street name and number. Post office box numbers are not acceptable for purposes of this subparagraph.

(ii) City and ZIP Code.

(iii) Date that the address as provided pursuant to this subparagraph was proposed to be effective.

(K) Contact officer and unit, including all of the following information:

(i) Name and telephone number of each contact officer.

(ii) Contact unit type of each contact officer such as units responsible for parole, registration, or county probation.

(L) A digitized image of the photograph and at least a single digit fingerprint of the parolee.

(M) A geographic coordinate for the parolee's residence location for use with a Geographical Information System (GIS) or comparable computer program.

(2) The information required by this subdivision shall come from the statewide parolee data base. The information obtained from each source shall be based on the same timeframe.

(3) All of the information required by this subdivision shall be provided utilizing a computer-to-computer transfer in a format usable by a desktop computer system. The transfer of this information shall be continually available to local law enforcement agencies upon request.

(4) The unauthorized release or receipt of the information described in this subdivision is a violation of Section 11143.

(f) Notwithstanding any other provision of law, an inmate who is released on parole shall not be returned to a location within 35 miles of the actual residence of a victim of, or a witness to, a violent felony as defined in paragraphs (1) to (7), inclusive, of subdivision (c) of Section 667.5 or a felony in which the defendant inflicts great bodily injury on any person other than an accomplice that has been charged and proved as provided for in Section 12022.53, 12022.7, or 12022.9, if the victim or witness has requested additional distance in the placement of the inmate on parole, and if the Board of Prison Terms or the Department of Corrections finds that there is a need to protect the life, safety, or well-being of a victim or witness.

(g) The authority shall give consideration to the equitable distribution of parolees and the proportion of out-of-county commitments from a county compared to the number of commitments from that county when making parole decisions.

(h) An inmate may be paroled to another state pursuant to any other law.

(i) (1) Except as provided in paragraph (2), the Department of Corrections shall be the agency primarily responsible for, and shall have control over, the program, resources, and staff implementing the Law Enforcement Automated Data System (LEADS) in conformance with subdivision (e).

(2) Notwithstanding paragraph (1), the Department of Justice shall be the agency primarily responsible for the proper release of information under LEADS that relates to fingerprint cards.

SEC. 17.5. Section 3003 of the Penal Code is amended to read:

3003. (a) Except as otherwise provided in this section, an inmate who is released on parole shall be returned to the county that was the last legal residence of the inmate prior to his or her incarceration.

For purposes of this subdivision, "last legal residence" shall not be construed to mean the county wherein the inmate committed an offense while confined in a state prison or local jail facility or while confined for treatment in a state hospital.

(b) Notwithstanding subdivision (a), an inmate may be returned to another county if that would be in the best interests of the public. If the Board of Prison Terms setting the conditions of parole for inmates sentenced pursuant to subdivision (b) of Section 1168, or the Department of Corrections setting the conditions of parole for inmates sentenced pursuant to Section 1170, decides on a return to another county, it shall place its reasons in writing in the parolee's permanent record and include these reasons in the notice to the sheriff or chief of police pursuant to Section 3058.6. In making its decision, the paroling authority shall consider, among others, the following factors, giving the greatest weight to the protection of the victim and the safety of the community:

(1) The need to protect the life or safety of a victim, the parolee, a witness, or any other person.

(2) Public concern that would reduce the chance that the inmate's parole would be successfully completed.

(3) The verified existence of a work offer, or an educational or vocational training program.

(4) The existence of family in another county with whom the inmate has maintained strong ties and whose support would increase the chance that the inmate's parole would be successfully completed.

(5) The lack of necessary outpatient treatment programs for parolees receiving treatment pursuant to Section 2960.

(c) The Department of Corrections, in determining an out-of-county commitment, shall give priority to the safety of the community and any witnesses and victims.

(d) In making its decision about an inmate who participated in a joint venture program pursuant to Article 1.5 (commencing with Section 2717.1) of Chapter 5, the paroling authority shall give serious consideration to releasing him or her to the county where the joint venture program employer is located if that employer states to the

paroling authority that he or she intends to employ the inmate upon release.

(e) (1) The following information, if available, shall be released by the Department of Corrections to local law enforcement agencies regarding a paroled inmate who is released in their jurisdictions:

(A) Last, first, and middle name.

(B) Birth date.

(C) Sex, race, height, weight, and hair and eye color.

(D) Date of parole and discharge.

(E) Registration status, if the inmate is required to register as a result of a controlled substance, sex, or arson offense.

(F) California Criminal Information Number, FBI number, social security number, and driver's license number.

(G) County of commitment.

(H) A description of scars, marks, and tattoos on the inmate.

(I) Offense or offenses for which the inmate was convicted that resulted in parole in this instance.

(J) Address, including all of the following information:

(i) Street name and number. Post office box numbers are not acceptable for purposes of this subparagraph.

(ii) City and ZIP Code.

(iii) Date that the address provided pursuant to this subparagraph was proposed to be effective.

(K) Contact officer and unit, including all of the following information:

(i) Name and telephone number of each contact officer.

(ii) Contact unit type of each contact officer such as units responsible for parole, registration, or county probation.

(L) A digitized image of the photograph and at least a single digit fingerprint of the parolee.

(M) A geographic coordinate for the parolee's residence location for use with a Geographical Information System (GIS) or comparable computer program.

(2) The information required by this subdivision shall come from the statewide parolee data base. The information obtained from each source shall be based on the same timeframe.

(3) All of the information required by this subdivision shall be provided utilizing a computer-to-computer transfer in a format usable by a desktop computer system. The transfer of this information shall be continually available to local law enforcement agencies upon request.

(4) The unauthorized release or receipt of the information described in this subdivision is a violation of Section 11143.

(f) Notwithstanding any other provision of law, an inmate who is released on parole shall not be returned to a location within 35 miles of the actual residence of a victim of, or a witness to, a violent felony as defined in paragraphs (1) to (7), inclusive, of subdivision (c) of Section 667.5 or a felony in which the defendant inflicts great bodily

injury on any person other than an accomplice that has been charged and proved as provided for in Section 12022.53, 12022.7, or 12022.9, if the victim or witness has requested additional distance in the placement of the inmate on parole, and if the Board of Prison Terms or the Department of Corrections finds that there is a need to protect the life, safety, or well-being of a victim or witness.

(g) Notwithstanding any other law, an inmate who is released on parole for any violation of Section 288 or 288.5 shall not be placed within one-quarter mile of any school including any or all of grades kindergarten to 6, inclusive.

(h) The authority shall give consideration to the equitable distribution of parolees and the proportion of out-of-county commitments from a county compared to the number of commitments from that county when making parole decisions.

(i) An inmate may be paroled to another state pursuant to any other law.

(j) (1) Except as provided in paragraph (2), the Department of Corrections shall be the agency primarily responsible for, and shall have control over, the program, resources, and staff implementing the Law Enforcement Automated Data System (LEADS) in conformance with subdivision (e).

(2) Notwithstanding paragraph (1), the Department of Justice shall be the agency primarily responsible for the proper release of information under LEADS that relates to fingerprint cards.

SEC. 18. Section 3057 of the Penal Code is amended to read:

3057. (a) Confinement pursuant to a revocation of parole in the absence of a new conviction and commitment to prison under other provisions of law, shall not exceed 12 months, except as provided in subdivision (c).

(b) Upon completion of confinement pursuant to parole revocation without a new commitment to prison, the inmate shall be released on parole for a period which shall not extend beyond that portion of the maximum statutory period of parole specified by Section 3000 which was unexpired at the time of each revocation.

(c) Notwithstanding the limitations in subdivision (a) and in Section 3060.5 upon confinement pursuant to a parole revocation, the parole authority may extend the confinement pursuant to parole revocation for a maximum of an additional 12 months for subsequent acts of misconduct committed by the parolee while confined pursuant to that parole revocation. Upon a finding of good cause to believe that a parolee has committed a subsequent act of misconduct and utilizing procedures governing parole revocation proceedings, the parole authority may extend the period of confinement pursuant to parole revocation as follows: (1) not more than 180 days for an act punishable as a felony, whether or not prosecution is undertaken, (2) not more than 90 days for an act punishable as a misdemeanor, whether or not prosecution is undertaken, and (3) not more than 30

days for an act defined as a serious disciplinary offense pursuant to subdivision (a) of Section 2932.

(d) (1) Except for parolees specified in paragraph (2), any revocation period imposed under subdivision (a) may be reduced in the same manner and to the same extent as a term of imprisonment may be reduced by worktime credits under Section 2933. Worktime credit must be earned and may be forfeited pursuant to the provisions of Section 2932.

Worktime credit forfeited shall not be restored.

(2) The following parolees shall not be eligible for credit under this subdivision:

(A) Parolees who are sentenced under Section 1168 with a maximum term of life imprisonment.

(B) Parolees who violated a condition of parole relating to association with specified persons, entering prohibited areas, attendance at parole outpatient clinics, or psychiatric attention.

(C) Parolees who were revoked for conduct described in, or that could be prosecuted under any of the following sections, whether or not prosecution is undertaken: Section 189, Section 191.5, subdivision (a) or paragraph (3) of subdivision (c) of Section 192, Section 203, 207, 211, 215, 217.1, or 220, subdivision (b) of Section 241, Section 244, paragraph (1) or (2) of subdivision (a) of Section 245, paragraph (2) or (6) of subdivision (a) of Section 261, paragraph (1) or (4) of subdivision (a) of Section 262, Section 264.1, subdivision (c) or (d) of Section 286, Section 288, subdivision (c) or (d) of Section 288a, subdivision (a) of Section 289, 347, or 404, subdivision (a) of Section 451, Section 12020, 12021, 12022, 12022.5, 12022.53, 12022.7, 12022.8, 12025, or 12560, or Section 664 for any attempt to engage in conduct described in or that could be prosecuted under any of the above-mentioned sections.

(D) Parolees who were revoked for any reason if they had been granted parole after conviction of any of the offenses specified in subparagraph (C).

(E) Parolees who the parole authority finds at a revocation hearing to be unsuitable for reduction of the period of confinement because of the circumstances and gravity of the parole violation, or because of prior criminal history.

SEC. 18.5. Section 3057 of the Penal Code is amended to read:

3057. (a) Confinement pursuant to a revocation of parole in the absence of a new conviction and commitment to prison under other provisions of law, shall not exceed 12 months, except as provided in subdivision (c).

(b) Upon completion of confinement pursuant to parole revocation without a new commitment to prison, the inmate shall be released on parole for a period which shall not extend beyond that portion of the maximum statutory period of parole specified by Section 3000 that was unexpired at the time of each revocation.

(c) Notwithstanding the limitations in subdivision (a) and in Section 3060.5 upon confinement pursuant to a parole revocation, the parole authority may extend the confinement pursuant to parole revocation for a maximum of an additional 12 months for subsequent acts of misconduct committed by the parolee while confined pursuant to that parole revocation. Upon a finding of good cause to believe that a parolee has committed a subsequent act of misconduct and utilizing procedures governing parole revocation proceedings, the parole authority may extend the period of confinement pursuant to parole revocation as follows: (1) not more than 180 days for an act punishable as a felony, whether or not prosecution is undertaken, (2) not more than 90 days for an act punishable as a misdemeanor, whether or not prosecution is undertaken, and (3) not more than 30 days for an act defined as a serious disciplinary offense pursuant to subdivision (a) of Section 2932.

(d) (1) Except for parolees specified in paragraph (2), any revocation period imposed under subdivision (a) may be reduced in the same manner and to the same extent as a term of imprisonment may be reduced by worktime credits under Section 2933. Worktime credit must be earned and may be forfeited pursuant to the provisions of Section 2932.

Worktime credit forfeited shall not be restored.

(2) The following parolees shall not be eligible for credit under this subdivision:

(A) Parolees who are sentenced under Section 1168 with a maximum term of life imprisonment.

(B) Parolees who violated a condition of parole relating to association with specified persons, entering prohibited areas, attendance at parole outpatient clinics, or psychiatric attention.

(C) Parolees who were revoked for conduct described in, or that could be prosecuted under any of the following sections, whether or not prosecution is undertaken: Section 191.5, subdivision (a) or paragraph (3) of subdivision (c) of Section 192, Section 203, 207, 211, 212.5, 215, 217.1, or 220, subdivision (b) of Section 241, Section 244, 245, or 264.1, subdivision (c) or (d) of Section 286, Section 288, subdivision (c) or (d) of Section 288a, subdivision (a) of Section 289, 347, or 404, Section 12020, 12021, 12022, 12022.53, 12022.8, 12025, 12280, 12303, 12303.1, 12303.2, 12303.3, or 12303.6, any violent offense listed in subdivision (c) of Section 667.5, or Section 664 for any attempt to engage in conduct described in or that could be prosecuted under any of the above-mentioned sections.

(D) Parolees who were revoked for any reason if they had been granted parole after conviction of any of the following offenses: Section 189, Section 191.5, subdivision (a) or paragraph (3) of subdivision (c) of Section 192, Section 203, 207, 211, 215, 217.1, or 220, subdivision (b) of Section 241, Section 244, paragraph (1) or (2) of subdivision (a) of Section 245, paragraph (2) or (6) of subdivision (a) of Section 261, paragraph (1) or (4) of subdivision (a) of Section 262,

Section 264.1, subdivision (c) or (d) of Section 286, Section 288, subdivision (c) or (d) of Section 288a, subdivision (a) of Section 289, 347, or 404, subdivision (a) of Section 451, Section 12020, 12021, 12022, 12022.5, 12022.53, 12022.7, 12022.8, 12025, or 12560, or Section 664 for any attempt to engage in conduct described in or that could be prosecuted under any of the above-mentioned sections.

(E) Parolees whom the parole authority finds at a revocation hearing to be unsuitable for reduction of the period of confinement because of the circumstances and gravity of the parole violation, or because of prior criminal history.

SEC. 19. Section 12022.53 of the Penal Code is amended to read:

12022.53. (a) This section applies to the following felonies:

(1) Section 187 (murder).

(2) Sections 203 and 205 (mayhem).

(3) Sections 207, 208, 209, and 209.5 (kidnapping).

(4) Section 211 (robbery).

(5) Section 215 (carjacking).

(6) Section 220 (assault with intent to commit a specified felony).

(7) Subdivision (d) of Section 245 (assault with a firearm on a peace officer or firefighter).

(8) Sections 261 and 262 (rape).

(9) Section 264.1 (rape or penetration by a foreign object in concert).

(10) Section 286 (sodomy).

(11) Sections 288 and 288.5 (lewd act on a child).

(12) Section 288a (oral copulation).

(13) Section 289 (penetration by a foreign object).

(14) Section 4500 (assault by life prisoner).

(15) Section 4501 (assault by prisoner).

(16) Section 4503 (holding a hostage by prisoner).

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

(18) Any attempt to commit a crime listed in this subdivision other than an assault.

(b) Notwithstanding any other provision of law, any person who is convicted of a felony specified in subdivision (a), and who in the commission of that felony personally used a firearm, shall be punished by a term of imprisonment of 10 years in the state prison, which shall be imposed in addition and consecutive to the punishment prescribed for that felony. The firearm need not be operable or loaded for this enhancement to apply.

(c) Notwithstanding any other provision of law, any person who is convicted of a felony specified in subdivision (a), and who in the commission of that felony intentionally and personally discharged a firearm, shall be punished by a term of imprisonment of 20 years in the state prison, which shall be imposed in addition and consecutive to the punishment prescribed for that felony.

(d) Notwithstanding any other provision of law, any person who is convicted of a felony specified in subdivision (a), Section 246, or subdivision (c) or (d) of Section 12034, and who in the commission of that felony intentionally and personally discharged a firearm and proximately caused great bodily injury, as defined in Section 12022.7, or death, to any person other than an accomplice, shall be punished by a term of imprisonment of 25 years to life in the state prison, which shall be imposed in addition and consecutive to the punishment prescribed for that felony.

(e) (1) The enhancements specified in this section shall apply to any person charged as a principal in the commission of an offense that includes an allegation pursuant to this section when a violation of both this section and subdivision (b) of Section 186.22 are pled and proved.

(2) An enhancement for participation in a criminal street gang pursuant to Chapter 11 (commencing with Section 186.20) of Title 7 of Part 1, shall not be imposed on a person in addition to an enhancement imposed pursuant to this subdivision, unless the person personally used or personally discharged a firearm in the commission of the offense.

(f) Only one additional term of imprisonment under this section shall be imposed per person for each crime. If more than one enhancement per person is found true under this section, the court shall impose upon that person the enhancement that provides the longest term of imprisonment. An enhancement involving a firearm specified in Section 12021.5, 12022, 12022.3, 12022.4, 12022.5, or 12022.55 shall not be imposed on a person in addition to an enhancement imposed pursuant to this section. An enhancement for great bodily injury as defined in Section 12022.7, 12022.8, or 12022.9 shall not be imposed on a person in addition to an enhancement imposed pursuant to subdivision (d).

(g) Notwithstanding any other provision of law, probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, any person found to come within the provisions of this section.

(h) Notwithstanding Section 1385 or any other provision of law, the court shall not strike an allegation under this section or a finding bringing a person within the provisions of this section.

(i) The total amount of credits awarded pursuant to Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 or pursuant to Section 4019 or any other provision of law shall not exceed 15 percent of the total term of imprisonment imposed on a defendant upon whom a sentence is imposed pursuant to this section.

(j) For the penalties in this section to apply, the existence of any fact required under subdivision (b), (c), or (d) shall be alleged in the information or indictment and either admitted by the defendant in open court or found to be true by the trier of fact. When an enhancement specified in this section has been admitted or found to

be true, the court shall impose punishment pursuant to this section rather than imposing punishment authorized under any other provision of law, unless another provision of law provides for a greater penalty or a longer term of imprisonment.

(k) When a person is found to have used or discharged a firearm in the commission of an offense that includes an allegation pursuant to this section and the firearm is owned by that person, a coparticipant, or a coconspirator, the court shall order that the firearm be deemed a nuisance and disposed of in the manner provided in Section 12028.

(*l*) The enhancements specified in this section shall not apply to the lawful use or discharge of a firearm by a public officer, as provided in Section 196, or by any person in lawful self-defense, lawful defense of another, or lawful defense of property, as provided in Sections 197, 198, and 198.5.

SEC. 19.5. Section 12022.53 of the Penal Code is amended to read:

12022.53. (a) This section applies to the following felonies:

(1) Section 187 (murder).

(2) Sections 203 and 205 (mayhem).

(3) Sections 207, 209, and 209.5 (kidnapping).

(4) Section 211 (robbery).

(5) Section 215 (carjacking).

(6) Section 220 (assault with intent to commit a specified felony).

(7) Subdivision (d) of Section 245 (assault with a firearm on a peace officer or firefighter).

(8) Sections 261 and 262 (rape).

(9) Section 264.1 (rape or penetration by a foreign object in concert).

(10) Section 286 (sodomy).

(11) Sections 288 and 288.5 (lewd act on a child).

(12) Section 288a (oral copulation).

(13) Section 289 (penetration by a foreign object).

(14) Section 4500 (assault by life prisoner).

(15) Section 4501 (assault by prisoner).

(16) Section 4503 (holding a hostage by prisoner).

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

(18) Any attempt to commit a crime listed in this subdivision other than an assault.

(b) Notwithstanding any other provision of law, any person who is convicted of a felony specified in subdivision (a), and who in the commission of that felony personally used a firearm, shall be punished by a term of imprisonment of 10 years in the state prison, which shall be imposed in addition and consecutive to the punishment prescribed for that felony. The firearm need not be operable or loaded for this enhancement to apply.

(c) Notwithstanding any other provision of law, any person who is convicted of a felony specified in subdivision (a), and who in the

commission of that felony intentionally and personally discharged a firearm, shall be punished by a term of imprisonment of 20 years in the state prison, which shall be imposed in addition and consecutive to the punishment prescribed for that felony.

(d) Notwithstanding any other provision of law, any person who is convicted of a felony specified in subdivision (a), Section 246, or subdivision (c) or (d) of Section 12034, and who in the commission of that felony intentionally and personally discharged a firearm and proximately caused great bodily injury, as defined in Section 12022.7, or death, to any person other than an accomplice, shall be punished by a term of imprisonment of 25 years to life in the state prison, which shall be imposed in addition and consecutive to the punishment prescribed for that felony.

(e) (1) The enhancements specified in this section shall apply to any person charged as a principal in the commission of an offense that includes an allegation pursuant to this section when a violation of both this section and subdivision (b) of Section 186.22 are pled and proved.

(2) An enhancement for participation in a criminal street gang pursuant to Chapter 11 (commencing with Section 186.20) of Title 7 of Part 1, shall not be imposed on a person in addition to an enhancement imposed pursuant to this subdivision, unless the person personally used or personally discharged a firearm in the commission of the offense.

(f) Only one additional term of imprisonment under this section shall be imposed per person for each crime. If more than one enhancement per person is found true under this section, the court shall impose upon that person the enhancement that provides the longest term of imprisonment. An enhancement involving a firearm specified in Section 12021.5, 12022, 12022.3, 12022.4, 12022.5, or 12022.55 shall not be imposed on a person in addition to an enhancement imposed pursuant to this section. An enhancement for great bodily injury as defined in Section 12022.7, 12022.8, or 12022.9 shall not be imposed on a person in addition to an enhancement imposed pursuant to subdivision (d).

(g) Notwithstanding any other provision of law, probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, any person found to come within the provisions of this section.

(h) Notwithstanding Section 1385 or any other provision of law, the court shall not strike an allegation under this section or a finding bringing a person within the provisions of this section.

(i) The total amount of credits awarded pursuant to Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 or pursuant to Section 4019 or any other provision of law shall not exceed 15 percent of the total term of imprisonment imposed on a defendant upon whom a sentence is imposed pursuant to this section.

(j) For the penalties in this section to apply, the existence of any fact required under subdivision (b), (c), or (d) shall be alleged in the information or indictment and either admitted by the defendant in open court or found to be true by the trier of fact. When an enhancement specified in this section has been admitted or found to be true, the court shall impose punishment pursuant to this section rather than imposing punishment authorized under any other provision of law, unless another provision of law provides for a greater penalty or a longer term of imprisonment.

(k) When a person is found to have used or discharged a firearm in the commission of an offense that includes an allegation pursuant to this section and the firearm is owned by that person, a coparticipant, or a coconspirator, the court shall order that the firearm be deemed a nuisance and disposed of in the manner provided in Section 12028.

(*l*) The enhancements specified in this section shall not apply to the lawful use or discharge of a firearm by a public officer, as provided in Section 196, or by any person in lawful self-defense, lawful defense of another, or lawful defense of property, as provided in Sections 197, 198, and 198.5.

SEC. 20. Section 676 of the Welfare and Institutions Code is amended to read:

676. (a) Unless requested by the minor concerning whom the petition has been filed and any parent or guardian present, the public shall not be admitted to a juvenile court hearing. Nothing in this section shall preclude the attendance of up to two family members of a prosecuting witness for the support of that witness, as authorized by Section 868.5 of the Penal Code. The judge or referee may nevertheless admit those persons he or she deems to have a direct and legitimate interest in the particular case or the work of the court. However, except as provided in subdivision (b), members of the public shall be admitted, on the same basis as they may be admitted to trials in a court of criminal jurisdiction, to hearings concerning petitions filed pursuant to Section 602 alleging that a minor is a person described in Section 602 by reason of the violation of any one of the following offenses:

(1) Murder.

(2) Arson of an inhabited building.

(3) Robbery while armed with a dangerous or deadly weapon.

(4) Rape with force or violence or threat of great bodily harm.

(5) Sodomy by force, violence, duress, menace, or threat of great bodily harm.

(6) Oral copulation by force, violence, duress, menace, or threat of great bodily harm.

(7) Any offense specified in subdivision (a) of Section 289 of the Penal Code.

(8) Kidnapping for ransom.

(9) Kidnapping for purpose of robbery.

(10) Kidnapping with bodily harm.
(11) Assault with intent to murder or attempted murder.
(12) Assault with a firearm or destructive device.
(13) Assault by any means of force likely to produce great bodily injury.
(14) Discharge of a firearm into an inhabited or occupied building.
(15) Any offense described in Section 1203.09 of the Penal Code.
(16) Any offense described in Section 12022.5 or 12022.53 of the Penal Code.
(17) Any felony offense in which a minor personally used a weapon listed in subdivision (a) of Section 12020 of the Penal Code.
(18) Burglary of an inhabited dwelling house or trailer coach, as defined in Section 635 of the Vehicle Code, or the inhabited portion of any other building, if the minor previously has been adjudged a ward of the court by reason of the commission of any offense listed in this section, including an offense listed in this paragraph.
(19) Any felony offense described in Section 136.1 or 137 of the Penal Code.
(20) Any offense as specified in Sections 11351, 11351.5, 11352, 11378, 11378.5, 11379, and 11379.5 of the Health and Safety Code.
(21) Criminal street gang activity which constitutes a felony pursuant to Section 186.22 of the Penal Code.
(22) Manslaughter as specified in Section 192 of the Penal Code.
(23) Driveby shooting or discharge of a weapon from or at a motor vehicle as specified in Sections 246, 247, and 12034 of the Penal Code.
(24) Any crime committed with an assault weapon, as defined in Section 12276 of the Penal Code, including possession of an assault weapon as specified in subdivision (b) of Section 12280 of the Penal Code.
(25) Carjacking, while armed with a dangerous or deadly weapon.
(26) Kidnapping, in violation of Section 209.5 of the Penal Code.
(27) Torture, as described in Sections 206 and 206.1 of the Penal Code.
(28) Aggravated mayhem, in violation of Section 205 of the Penal Code.

(b) Where the petition filed alleges that the minor is a person described in Section 602 by reason of the commission of rape with force or violence or great bodily harm; sodomy by force, violence, duress, menace, or threat of great bodily harm; oral copulation by force, violence, duress, menace, or threat of great bodily harm; or any offense specified in Section 289 of the Penal Code, members of the public shall not be admitted to the hearing in either of the following instances:

(1) Upon a motion for a closed hearing by the district attorney, who shall make the motion if so requested by the victim.
(2) During the victim's testimony, if, at the time of the offense, the victim was under 16 years of age.

(c) The name of a minor found to have committed one of the offenses listed in subdivision (a) shall not be confidential, unless the court, for good cause, so orders.

(d) Notwithstanding Sections 827 and 828 and subject to subdivisions (e) and (f), when a petition is sustained for any offense listed in subdivision (a), the charging petition, the minutes of the proceeding, and the orders of adjudication and disposition of the court that are contained in the court file shall be available for public inspection. Nothing in this subdivision shall be construed to authorize public access to any other documents in the court file.

(e) The probation officer or any party may petition the juvenile court to prohibit disclosure to the public of any file or record. The juvenile court shall prohibit the disclosure if it appears that the harm to the minor, victims, witnesses, or public from the public disclosure outweighs the benefit of public knowledge.

(f) Nothing in this section shall be applied to limit the disclosure of information as otherwise provided for by law.

SEC. 20.5. Section 676 of the Welfare and Institutions Code is amended to read:

676. (a) Unless requested by the minor concerning whom the petition has been filed and any parent or guardian present, the public shall not be admitted to a juvenile court hearing. Nothing in this section shall preclude the attendance of up to two family members of a prosecuting witness for the support of that witness, as authorized by Section 868.5 of the Penal Code. The judge or referee may nevertheless admit those persons he or she deems to have a direct and legitimate interest in the particular case or the work of the court. However, except as provided in subdivision (b), members of the public shall be admitted, on the same basis as they may be admitted to trials in a court of criminal jurisdiction, to hearings concerning petitions filed pursuant to Section 602 alleging that a minor is a person described in Section 602 by reason of the violation of any one of the following offenses:

(1) Murder.

(2) Arson of an inhabited building.

(3) Robbery while armed with a dangerous or deadly weapon.

(4) Rape with force or violence or threat of great bodily harm.

(5) Sodomy by force, violence, duress, menace, or threat of great bodily harm.

(6) Oral copulation by force, violence, duress, menace, or threat of great bodily harm.

(7) Any offense specified in subdivision (a) of Section 289 of the Penal Code.

(8) Kidnapping for ransom.

(9) Kidnapping in violation of subdivision (b) of Section 209 of the Penal Code.

(10) Kidnapping with bodily harm.

(11) Assault with intent to murder or attempted murder.

(12) Assault with a firearm or destructive device.

(13) Assault by any means of force likely to produce great bodily injury.

(14) Discharge of a firearm into an inhabited or occupied building.

(15) Any offense described in Section 1203.09 of the Penal Code.

(16) Any offense described in Section 12022.5 or 12022.53 of the Penal Code.

(17) Any felony offense in which a minor personally used a weapon listed in subdivision (a) of Section 12020 of the Penal Code.

(18) Burglary of an inhabited dwelling house or trailer coach, as defined in Section 635 of the Vehicle Code, or the inhabited portion of any other building, if the minor previously has been adjudged a ward of the court by reason of the commission of any offense listed in this section, including an offense listed in this paragraph.

(19) Any felony offense described in Section 136.1 or 137 of the Penal Code.

(20) Any offense as specified in Sections 11351, 11351.5, 11352, 11378, 11378.5, 11379, and 11379.5 of the Health and Safety Code.

(21) Criminal street gang activity which constitutes a felony pursuant to Section 186.22 of the Penal Code.

(22) Manslaughter as specified in Section 192 of the Penal Code.

(23) Driveby shooting or discharge of a weapon from or at a motor vehicle as specified in Sections 246, 247, and 12034 of the Penal Code.

(24) Any crime committed with an assault weapon, as defined in Section 12276 of the Penal Code, including possession of an assault weapon as specified in subdivision (b) of Section 12280 of the Penal Code.

(25) Carjacking, while armed with a dangerous or deadly weapon.

(26) Kidnapping, in violation of Section 209.5 of the Penal Code.

(27) Torture, as described in Sections 206 and 206.1 of the Penal Code.

(28) Aggravated mayhem, in violation of Section 205 of the Penal Code.

(b) Where the petition filed alleges that the minor is a person described in Section 602 by reason of the commission of rape with force or violence or great bodily harm; sodomy by force, violence, duress, menace, or threat of great bodily harm; oral copulation by force, violence, duress, menace, or threat of great bodily harm; or any offense specified in Section 289 of the Penal Code, members of the public shall not be admitted to the hearing in either of the following instances:

(1) Upon a motion for a closed hearing by the district attorney, who shall make the motion if so requested by the victim.

(2) During the victim's testimony, if, at the time of the offense the victim was under 16 years of age.

(c) The name of a minor found to have committed one of the offenses listed in subdivision (a) shall not be confidential, unless the court, for good cause, so orders.

(d) Notwithstanding Sections 827 and 828 and subject to subdivisions (e) and (f), when a petition is sustained for any offense listed in subdivision (a), the charging petition, the minutes of the proceeding, and the orders of adjudication and disposition of the court that are contained in the court file shall be available for public inspection. Nothing in this subdivision shall be construed to authorize public access to any other documents in the court file.

(e) The probation officer or any party may petition the juvenile court to prohibit disclosure to the public of any file or record. The juvenile court shall prohibit the disclosure if it appears that the harm to the minor, victims, witnesses, or public from the public disclosure outweighs the benefit of public knowledge.

(f) Nothing in this section shall be applied to limit the disclosure of information as otherwise provided for by law.

SEC. 21. Section 707 of the Welfare and Institutions Code is amended to read:

707. (a) In any case in which a minor is alleged to be a person described in Section 602 by reason of the violation, when he or she was 16 years of age or older, of any criminal statute or ordinance except those listed in subdivision (b), upon motion of the petitioner made prior to the attachment of jeopardy the court shall cause the probation officer to investigate and submit a report on the behavioral patterns and social history of the minor being considered for a determination of unfitness. Following submission and consideration of the report, and of any other relevant evidence which the petitioner or the minor may wish to submit, the juvenile court may find that the minor is not a fit and proper subject to be dealt with under the juvenile court law if it concludes that the minor would not be amenable to the care, treatment, and training program available through the facilities of the juvenile court, based upon an evaluation of the following criteria:

(1) The degree of criminal sophistication exhibited by the minor.

(2) Whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction.

(3) The minor's previous delinquent history.

(4) Success of previous attempts by the juvenile court to rehabilitate the minor.

(5) The circumstances and gravity of the offense alleged in the petition to have been committed by the minor.

A determination that the minor is not a fit and proper subject to be dealt with under the juvenile court law may be based on any one or a combination of the factors set forth above, which shall be recited in the order of unfitness. In any case in which a hearing has been noticed pursuant to this section, the court shall postpone the taking of a plea to the petition until the conclusion of the fitness hearing, and no plea which may already have been entered shall constitute evidence at the hearing.

(b) Subdivision (c) shall be applicable in any case in which a minor is alleged to be a person described in Section 602 by reason of the violation, when he or she was 16 years of age or older, of one of the following offenses:

(1) Murder.

(2) Arson, as provided in subdivision (a) or (b) of Section 451 of the Penal Code.

(3) Robbery while armed with a dangerous or deadly weapon.

(4) Rape with force or violence or threat of great bodily harm.

(5) Sodomy by force, violence, duress, menace, or threat of great bodily harm.

(6) Lewd or lascivious act as provided in subdivision (b) of Section 288 of the Penal Code.

(7) Oral copulation by force, violence, duress, menace, or threat of great bodily harm.

(8) Any offense specified in subdivision (a) of Section 289 of the Penal Code.

(9) Kidnapping for ransom.

(10) Kidnapping for purpose of robbery.

(11) Kidnapping with bodily harm.

(12) Attempted murder.

(13) Assault with a firearm or destructive device.

(14) Assault by any means of force likely to produce great bodily injury.

(15) Discharge of a firearm into an inhabited or occupied building.

(16) Any offense described in Section 1203.09 of the Penal Code.

(17) Any offense described in Section 12022.5 or 12022.53 of the Penal Code.

(18) Any felony offense in which the minor personally used a weapon listed in subdivision (a) of Section 12020 of the Penal Code.

(19) Any felony offense described in Section 136.1 or 137 of the Penal Code.

(20) Manufacturing, compounding, or selling one-half ounce or more of any salt or solution of a controlled substance specified in subdivision (e) of Section 11055 of the Health and Safety Code.

(21) Any violent felony, as defined in subdivision (c) of Section 667.5 of the Penal Code, which would also constitute a felony violation of subdivision (b) of Section 186.22 of the Penal Code.

(22) Escape, by the use of force or violence, from any county juvenile hall, home, ranch, camp, or forestry camp in violation of subdivision (b) of Section 871 where great bodily injury is intentionally inflicted upon an employee of the juvenile facility during the commission of the escape.

(23) Torture, as described in Sections 206 and 206.1 of the Penal Code.

(24) Aggravated mayhem, as described in Section 205 of the Penal Code.

(25) Carjacking, as described in Section 215 of the Penal Code, while armed with a dangerous or deadly weapon.

(26) Kidnapping, as punishable in subdivision (d) of Section 208 of the Penal Code.

(27) Kidnapping, as punishable in Section 209.5 of the Penal Code.

(28) The offense described in subdivision (c) of Section 12034 of the Penal Code.

(29) The offense described in Section 12308 of the Penal Code.

(c) With regard to a minor alleged to be a person described in Section 602 by reason of the violation, when he or she was 16 years of age or older, of any of the offenses listed in subdivision (b), upon motion of the petitioner made prior to the attachment of jeopardy the court shall cause the probation officer to investigate and submit a report on the behavioral patterns and social history of the minor being considered for a determination of unfitness. Following submission and consideration of the report, and of any other relevant evidence which the petitioner or the minor may wish to submit the minor shall be presumed to be not a fit and proper subject to be dealt with under the juvenile court law unless the juvenile court concludes, based upon evidence, which evidence may be of extenuating or mitigating circumstances, that the minor would be amenable to the care, treatment, and training program available through the facilities of the juvenile court based upon an evaluation of each of the following criteria:

(1) The degree of criminal sophistication exhibited by the minor.

(2) Whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction.

(3) The minor's previous delinquent history.

(4) Success of previous attempts by the juvenile court to rehabilitate the minor.

(5) The circumstances and gravity of the offenses alleged in the petition to have been committed by the minor.

A determination that the minor is a fit and proper subject to be dealt with under the juvenile court law shall be based on a finding of amenability after consideration of the criteria set forth above, and findings therefor recited in the order as to each of the above criteria that the minor is fit and proper under each and every one of the above criteria. In making a finding of fitness, the court may consider extenuating or mitigating circumstances in evaluating each of the above criteria. In any case in which a hearing has been noticed pursuant to this section, the court shall postpone the taking of a plea to the petition until the conclusion of the fitness hearing and no plea which may already have been entered shall constitute evidence at the hearing.

(d) (1) In any case in which a minor is alleged to be a person described in Section 602 by reason of the violation, when he or she had attained the age of 14 years but had not attained the age of 16 years, of any of the offenses set forth in paragraph (2), upon motion

of the petitioner made prior to the attachment of jeopardy the court shall cause the probation officer to investigate and submit a report on the behavioral patterns and social history of the minor being considered for a determination of unfitness. Following submission and consideration of the report, and of any other relevant evidence that the petitioner or the minor may wish to submit, the juvenile court may find that the minor is not a fit and proper subject to be dealt with under the juvenile court law if it concludes that the minor would not be amenable to the care, treatment, and training program available through the facilities of the juvenile court, based upon an evaluation of the following criteria:

(A) The degree of criminal sophistication exhibited by the minor.

(B) Whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction.

(C) The minor's previous delinquent history.

(D) Success of previous attempts by the juvenile court to rehabilitate the minor.

(E) The circumstances and gravity of the offense alleged in the petition to have been committed by the minor.

A determination that the minor is not a fit and proper subject to be dealt with under the juvenile court law may be based on any one or a combination of the factors set forth above, which shall be recited in the order of unfitness. In any case in which a hearing has been noticed pursuant to this subdivision, the court shall postpone the taking of a plea to the petition until the conclusion of the fitness hearing, and no plea that may already have been entered shall constitute evidence at the hearing.

(2) Paragraph (1) shall be applicable in any case in which a minor is alleged to be a person described in Section 602 by reason of the violation, when he or she had attained the age of 14 years but had not attained the age of 16 years, of one of the following offenses:

(A) Murder.

(B) Robbery in which the minor personally used a firearm.

(C) Rape with force or violence or threat of great bodily harm.

(D) Sodomy by force, violence, duress, menace, or threat of great bodily harm.

(E) Oral copulation by force, violence, duress, menace, or threat of great bodily harm.

(F) The offense specified in subdivision (a) of Section 289 of the Penal Code.

(G) Kidnapping for ransom.

(H) Kidnapping for purpose of robbery.

(I) Kidnapping with bodily harm.

(J) Kidnapping, as punishable in subdivision (d) of Section 208 of the Penal Code.

(K) The offense described in subdivision (c) of Section 12034 of the Penal Code, in which the minor personally used a firearm.

(L) Personally discharging a firearm into an inhabited or occupied building.

(M) Manufacturing, compounding, or selling one-half ounce or more of any salt or solution of a controlled substance specified in subdivision (e) of Section 11055 of the Health and Safety Code.

(N) Escape, by the use of force or violence, from any county juvenile hall, home, ranch, camp, or forestry camp in violation of subdivision (b) of Section 871 where great bodily injury is intentionally inflicted upon an employee of the juvenile facility during the commission of the escape.

(O) Torture, as described in Section 206 of the Penal Code.

(P) Aggravated mayhem, as described in Section 205 of the Penal Code.

(Q) Assault with a firearm in which the minor personally used the firearm.

(R) Attempted murder.

(S) Rape in which the minor personally used a firearm.

(T) Burglary in which the minor personally used a firearm.

(U) Kidnapping in which the minor personally used a firearm.

(V) The offense described in Section 12308 of the Penal Code.

(W) Kidnapping, in violation of Section 209.5 of the Penal Code.

(X) Carjacking in which the minor personally used a firearm.

(e) This subdivision shall apply to a minor alleged to be a person described in Section 602 by reason of the violation, when he or she had attained the age of 14 years but had not attained the age of 16 years, of the offense of murder in which it is alleged in the petition that one of the following exists:

(1) In the case of murder in the first or second degree, the minor personally killed the victim.

(2) In the case of murder in the first or second degree, the minor, acting with the intent to kill the victim, aided, abetted, counseled, commanded, induced, solicited, requested, or assisted any person to kill the victim.

(3) In the case of murder in the first degree, while not the actual killer, the minor, acting with reckless indifference to human life and as a major participant in a felony enumerated in paragraph (17) of subdivision (a) of Section 190.2, or an attempt to commit that felony, aided, abetted, counseled, commanded, induced, solicited, requested, or assisted in the commission or attempted commission of that felony and the commission or attempted commission of that felony or the immediate flight therefrom resulted in the death of the victim.

Upon motion of the petitioner made prior to the attachment of jeopardy, the court shall cause the probation officer to investigate and submit a report on the behavioral patterns and social history of the minor being considered for a determination of unfitness. Following submission and consideration of the report, and of any other relevant evidence which the petitioner or the minor may wish

to submit, the minor shall be presumed to be not a fit and proper subject to be dealt with under the juvenile court law unless the juvenile court concludes, based upon evidence, which evidence may be of extenuating or mitigating circumstances, that the minor would be amenable to the care, treatment, and training program available through the facilities of the juvenile court based upon an evaluation of each of the following criteria:

(A) The degree of criminal sophistication exhibited by the minor.

(B) Whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction.

(C) The minor's previous delinquent history.

(D) Success of previous attempts by the juvenile court to rehabilitate the minor.

(E) The circumstances and gravity of the offenses alleged in the petition to have been committed by the minor.

A determination that the minor is a fit and proper subject to be dealt with under the juvenile court law shall be based on a finding of amenability after consideration of the criteria set forth above, and findings therefor recited in the order as to each of the above criteria that the minor is fit and proper under each and every one of the above criteria. In making a finding of fitness, the court may consider extenuating or mitigating circumstances in evaluating each of the above criteria. In any case in which a hearing has been noticed pursuant to this section, the court shall postpone the taking of a plea to the petition until the conclusion of the fitness hearing and no plea which may already have been entered shall constitute evidence at the hearing.

(f) Any report submitted by a probation officer pursuant to this section regarding the behavioral patterns and social history of the minor being considered for a determination of unfitness shall include any written or oral statement offered by the victim, the victim's parent or guardian if the victim is a minor, or if the victim has died, the victim's next of kin, as authorized by subdivision (b) of Section 656.2. Victims' statements shall be considered by the court to the extent they are relevant to the court's determination of unfitness.

SEC. 21.5. Section 707 of the Welfare and Institutions Code is amended to read:

707. (a) In any case in which a minor is alleged to be a person described in Section 602 by reason of the violation, when he or she was 16 years of age or older, of any criminal statute or ordinance except those listed in subdivision (b), upon motion of the petitioner made prior to the attachment of jeopardy the court shall cause the probation officer to investigate and submit a report on the behavioral patterns and social history of the minor being considered for a determination of unfitness. Following submission and consideration of the report, and of any other relevant evidence which the petitioner or the minor may wish to submit, the juvenile court may find that the minor is not a fit and proper subject to be dealt with under the

juvenile court law if it concludes that the minor would not be amenable to the care, treatment, and training program available through the facilities of the juvenile court, based upon an evaluation of the following criteria:

(1) The degree of criminal sophistication exhibited by the minor.

(2) Whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction.

(3) The minor's previous delinquent history.

(4) Success of previous attempts by the juvenile court to rehabilitate the minor.

(5) The circumstances and gravity of the offense alleged in the petition to have been committed by the minor.

A determination that the minor is not a fit and proper subject to be dealt with under the juvenile court law may be based on any one or a combination of the factors set forth above, which shall be recited in the order of unfitness. In any case in which a hearing has been noticed pursuant to this section, the court shall postpone the taking of a plea to the petition until the conclusion of the fitness hearing, and no plea which may already have been entered shall constitute evidence at the hearing.

(b) Subdivision (c) shall be applicable in any case in which a minor is alleged to be a person described in Section 602 by reason of the violation, when he or she was 16 years of age or older, of one of the following offenses:

(1) Murder.

(2) Arson, as provided in subdivision (a) or (b) of Section 451 of the Penal Code.

(3) Robbery while armed with a dangerous or deadly weapon.

(4) Rape with force or violence or threat of great bodily harm.

(5) Sodomy by force, violence, duress, menace, or threat of great bodily harm.

(6) Lewd or lascivious act as provided in subdivision (b) of Section 288 of the Penal Code.

(7) Oral copulation by force, violence, duress, menace, or threat of great bodily harm.

(8) Any offense specified in subdivision (a) of Section 289 of the Penal Code.

(9) Kidnapping for ransom.

(10) Kidnapping in violation of subdivision (b) of Section 209 of the Penal Code.

(11) Kidnapping with bodily harm.

(12) Attempted murder.

(13) Assault with a firearm or destructive device.

(14) Assault by any means of force likely to produce great bodily injury.

(15) Discharge of a firearm into an inhabited or occupied building.

(16) Any offense described in Section 1203.09 of the Penal Code.

(17) Any offense described in Section 12022.5 or 12022.53 of the Penal Code.

(18) Any felony offense in which the minor personally used a weapon listed in subdivision (a) of Section 12020 of the Penal Code.

(19) Any felony offense described in Section 136.1 or 137 of the Penal Code.

(20) Manufacturing, compounding, or selling one-half ounce or more of any salt or solution of a controlled substance specified in subdivision (e) of Section 11055 of the Health and Safety Code.

(21) Any violent felony, as defined in subdivision (c) of Section 667.5 of the Penal Code, which would also constitute a felony violation of subdivision (b) of Section 186.22 of the Penal Code.

(22) Escape, by the use of force or violence, from any county juvenile hall, home, ranch, camp, or forestry camp in violation of subdivision (b) of Section 871 where great bodily injury is intentionally inflicted upon an employee of the juvenile facility during the commission of the escape.

(23) Torture, as described in Sections 206 and 206.1 of the Penal Code.

(24) Aggravated mayhem, as described in Section 205 of the Penal Code.

(25) Carjacking, as described in Section 215 of the Penal Code, while armed with a dangerous or deadly weapon.

(26) Kidnapping, as punishable in Section 209.5 of the Penal Code.

(27) The offense described in subdivision (c) of Section 12034 of the Penal Code.

(28) The offense described in Section 12308 of the Penal Code.

(c) With regard to a minor alleged to be a person described in Section 602 by reason of the violation, when he or she was 16 years of age or older, of any of the offenses listed in subdivision (b), upon motion of the petitioner made prior to the attachment of jeopardy the court shall cause the probation officer to investigate and submit a report on the behavioral patterns and social history of the minor being considered for a determination of unfitness. Following submission and consideration of the report, and of any other relevant evidence which the petitioner or the minor may wish to submit the minor shall be presumed to be not a fit and proper subject to be dealt with under the juvenile court law unless the juvenile court concludes, based upon evidence, which evidence may be of extenuating or mitigating circumstances, that the minor would be amenable to the care, treatment, and training program available through the facilities of the juvenile court based upon an evaluation of each of the following criteria:

(1) The degree of criminal sophistication exhibited by the minor.

(2) Whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction.

(3) The minor's previous delinquent history.

(4) Success of previous attempts by the juvenile court to rehabilitate the minor.

(5) The circumstances and gravity of the offenses alleged in the petition to have been committed by the minor.

A determination that the minor is a fit and proper subject to be dealt with under the juvenile court law shall be based on a finding of amenability after consideration of the criteria set forth above, and findings therefor recited in the order as to each of the above criteria that the minor is fit and proper under each and every one of the above criteria. In making a finding of fitness, the court may consider extenuating or mitigating circumstances in evaluating each of the above criteria. In any case in which a hearing has been noticed pursuant to this section, the court shall postpone the taking of a plea to the petition until the conclusion of the fitness hearing and no plea which may already have been entered shall constitute evidence at the hearing.

(d) (1) In any case in which a minor is alleged to be a person described in Section 602 by reason of the violation, when he or she had attained the age of 14 years but had not attained the age of 16 years, of any of the offenses set forth in paragraph (2), upon motion of the petitioner made prior to the attachment of jeopardy the court shall cause the probation officer to investigate and submit a report on the behavioral patterns and social history of the minor being considered for a determination of unfitness. Following submission and consideration of the report, and of any other relevant evidence that the petitioner or the minor may wish to submit, the juvenile court may find that the minor is not a fit and proper subject to be dealt with under the juvenile court law if it concludes that the minor would not be amenable to the care, treatment, and training program available through the facilities of the juvenile court, based upon an evaluation of the following criteria:

(A) The degree of criminal sophistication exhibited by the minor.

(B) Whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction.

(C) The minor's previous delinquent history.

(D) Success of previous attempts by the juvenile court to rehabilitate the minor.

(E) The circumstances and gravity of the offense alleged in the petition to have been committed by the minor.

A determination that the minor is not a fit and proper subject to be dealt with under the juvenile court law may be based on any one or a combination of the factors set forth above, which shall be recited in the order of unfitness. In any case in which a hearing has been noticed pursuant to this subdivision, the court shall postpone the taking of a plea to the petition until the conclusion of the fitness hearing, and no plea that may already have been entered shall constitute evidence at the hearing.

(2) Paragraph (1) shall be applicable in any case in which a minor is alleged to be a person described in Section 602 by reason of the violation, when he or she had attained the age of 14 years but had not attained the age of 16 years, of one of the following offenses:

(A) Murder.

(B) Robbery in which the minor personally used a firearm.

(C) Rape with force or violence or threat of great bodily harm.

(D) Sodomy by force, violence, duress, menace, or threat of great bodily harm.

(E) Oral copulation by force, violence, duress, menace, or threat of great bodily harm.

(F) The offense specified in subdivision (a) of Section 289 of the Penal Code.

(G) Kidnapping for ransom.

(H) Kidnapping in violation of subdivision (b) of Section 209 of the Penal Code.

(I) Kidnapping with bodily harm.

(J) Kidnapping, in violation of Section 209.5 of the Penal Code.

(K) The offense described in subdivision (c) of Section 12034 of the Penal Code, in which the minor personally used a firearm.

(L) Personally discharging a firearm into an inhabited or occupied building.

(M) Manufacturing, compounding, or selling one-half ounce or more of any salt or solution of a controlled substance specified in subdivision (e) of Section 11055 of the Health and Safety Code.

(N) Escape, by the use of force or violence, from any county juvenile hall, home, ranch, camp, or forestry camp in violation of subdivision (b) of Section 871 where great bodily injury is intentionally inflicted upon an employee of the juvenile facility during the commission of the escape.

(O) Torture, as described in Section 206 of the Penal Code.

(P) Aggravated mayhem, as described in Section 205 of the Penal Code.

(Q) Assault with a firearm in which the minor personally used the firearm.

(R) Attempted murder.

(S) Rape in which the minor personally used a firearm.

(T) Burglary in which the minor personally used a firearm.

(U) Kidnapping in which the minor personally used a firearm.

(V) The offense described in Section 12308 of the Penal Code.

(W) Carjacking in which the minor personally used a firearm.

(e) This subdivision shall apply to a minor alleged to be a person described in Section 602 by reason of the violation, when he or she had attained the age of 14 years but had not attained the age of 16 years, of the offense of murder in which it is alleged in the petition that one of the following exists:

(1) In the case of murder in the first or second degree, the minor personally killed the victim.

(2) In the case of murder in the first or second degree, the minor, acting with the intent to kill the victim, aided, abetted, counseled, commanded, induced, solicited, requested, or assisted any person to kill the victim.

(3) In the case of murder in the first degree, while not the actual killer, the minor, acting with reckless indifference to human life and as a major participant in a felony enumerated in paragraph (17) of subdivision (a) of Section 190.2 of the Penal Code, or an attempt to commit that felony, aided, abetted, counseled, commanded, induced, solicited, requested, or assisted in the commission or attempted commission of that felony and the commission or attempted commission of that felony or the immediate flight therefrom resulted in the death of the victim.

Upon motion of the petitioner made prior to the attachment of jeopardy, the court shall cause the probation officer to investigate and submit a report on the behavioral patterns and social history of the minor being considered for a determination of unfitness. Following submission and consideration of the report, and of any other relevant evidence which the petitioner or the minor may wish to submit, the minor shall be presumed to be not a fit and proper subject to be dealt with under the juvenile court law unless the juvenile court concludes, based upon evidence, which evidence may be of extenuating or mitigating circumstances, that the minor would be amenable to the care, treatment, and training program available through the facilities of the juvenile court based upon an evaluation of each of the following criteria:

(A) The degree of criminal sophistication exhibited by the minor.

(B) Whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction.

(C) The minor's previous delinquent history.

(D) Success of previous attempts by the juvenile court to rehabilitate the minor.

(E) The circumstances and gravity of the offenses alleged in the petition to have been committed by the minor.

A determination that the minor is a fit and proper subject to be dealt with under the juvenile court law shall be based on a finding of amenability after consideration of the criteria set forth above, and findings therefor recited in the order as to each of the above criteria that the minor is fit and proper under each and every one of the above criteria. In making a finding of fitness, the court may consider extenuating or mitigating circumstances in evaluating each of the above criteria. In any case in which a hearing has been noticed pursuant to this section, the court shall postpone the taking of a plea to the petition until the conclusion of the fitness hearing and no plea which may already have been entered shall constitute evidence at the hearing.

(f) Any report submitted by a probation officer pursuant to this section regarding the behavioral patterns and social history of the

minor being considered for a determination of unfitness shall include any written or oral statement offered by the victim, the victim's parent or guardian if the victim is a minor, or if the victim has died, the victim's next of kin, as authorized by subdivision (b) of Section 656.2. Victims' statements shall be considered by the court to the extent they are relevant to the court's determination of unfitness.

SEC. 22. Section 3052 of the Welfare and Institutions Code is amended to read:

3052. (a) Sections 3050 and 3051 shall not apply to any of the following:

(1) Persons convicted of any offense for which the provisions of Section 667.6 of the Penal Code apply, or any offense described in Chapter 1 (commencing with Section 450) of Title 13 of Part 1 of the Penal Code ; or any person convicted of committing or attempting to commit any violent felony as defined in subdivision (c) of Section 667.5 of the Penal Code.

(2) Persons whose sentence is enhanced pursuant to subdivision (b) of Section 12022 of the Penal Code, or Section 12022.3, 12022.5, 12022.53, 12022.6, 12022.7, or 12022.8 of the Penal Code ; or persons whose sentence is subject to the provisions of Section 3046 of the Penal Code; or persons whose conviction results in a sentence which, in the aggregate, exclusive of any credit that may be earned pursuant to Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 of the Penal Code, exceeds six years' imprisonment in state prison; or persons found to come under the provisions of Section 1203.06 of the Penal Code.

(b) Notwithstanding the provisions of subdivision (a) of this section or Section 3053, the fact that a person comes within Section 1203.07 of the Penal Code does not mean that he or she may not be committed and treated.

SEC. 23. The amendment of Section 11370.2 of the Health and Safety Code, to add subdivision (f) to that section, is intended to be declaratory of existing law.

SEC. 24. The amendment of Section 11379.9 of the Health and Safety Code, to add subdivision (b) to that section, is intended to be declaratory of existing law. In enacting Section 11379.9, the Legislature did not intend to preclude prosecution under any other provision of law.

SEC. 25. The amendments to Sections 286, 288a, and 289 of the Penal Code, which number certain subdivisions with paragraphs, are intended to be technical amendments only and are not intended to make any substantive changes to those sections.

SEC. 26. The amendments to Section 1170.11 of the Penal Code, which add certain newly enacted provisions to the list of specific enhancements, are intended to be declaratory of existing law. By using the phrase 'but is not limited to' in Section 1170.11, it is the intent of the Legislature that all specific enhancements shall apply

to criminal offenses from the time those enhancements are enacted, whether or not those enhancements are listed in Section 1170.11.

SEC. 27. The amendment to subdivision (d) of Section 12022.53 of the Penal Code is intended to be declaratory of existing law and to clarify that the enhancement in that subdivision applies to causing great bodily injury or death.

SEC. 28. The amendment to subdivision (f) of Section 12022.53 of the Penal Code corrects a drafting error in the original statute. In enacting subdivision (f), the Legislature intended to preclude multiple enhancements for the infliction of great bodily injury on one victim for one crime when an enhancement was imposed under subdivision (d) of Section 12022.53. The Legislature did not intend to preclude the imposition of an enhancement for the infliction of great bodily injury under Section 12022.7, 12022.8, or 12022.9 in addition to the imposition of an enhancement for the use or discharge of a firearm under subdivision (b) or (c) of Section 12022.53 when the great bodily injury was not caused by discharging the firearm.

SEC. 29. (a) Section 7.1 of this bill incorporates amendments to Section 368 of the Penal Code proposed by both this bill and AB 880. 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 368 of the Penal Code, (3) AB 1955 and SB 1715 are not enacted or as enacted do not amend that section, and (4) this bill is enacted after AB 880, in which case Section 368 of the Penal Code, as amended by Section 7 of this bill, shall remain operative only until the operative date of AB 880, at which time Section 7.1 of this bill shall become operative, and Sections 7.2 to 7.7, inclusive, of this bill shall not become operative.

(b) Section 7.2 of this bill incorporates amendments to Section 368 of the Penal Code proposed by both this bill and AB 1955. 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 368 of the Penal Code, (3) AB 880 and SB 1715 are not enacted or as enacted do not amend that section, and (4) this bill is enacted after AB 1955, in which case Section 368 of the Penal Code, as amended by Section 7 of this bill, shall remain operative only until the operative date of AB 1955, at which time Section 7.2 of this bill shall become operative, and Section 7.1 and Sections 7.3 to 7.7, inclusive, of this bill shall not become operative.

(c) Section 7.3 of this bill incorporates amendments to Section 368 of the Penal Code proposed by both this bill and SB 1715. 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 368 of the Penal Code, (3) AB 880 and AB 1955 are not enacted or as enacted do not amend that section, and (4) this bill is enacted after SB 1715, in which case Section 368 of the Penal Code, as amended by Section 7 of this bill, shall remain operative only until the operative date of SB 1715, at which time Section 7.3 of this

bill shall become operative, and Sections 7.1 and 7.2 and Sections 7.4 to 7.7, inclusive, of this bill shall not become operative.

(d) Section 7.4 of this bill incorporates amendments to Section 368 of the Penal Code proposed by this bill, AB 880, and AB 1955. 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) each bill amends Section 368 of the Penal Code, (3) SB 1715 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 880 and AB 1955, in which case Section 368 of the Penal Code, as amended by Section 7 of this bill, shall remain operative only until the operative date of AB 880 and AB 1955, at which time Section 7.4 of this bill shall become operative, and Sections 7.1, 7.2, 7.3, 7.5, 7.6, and 7.7 of this bill shall not become operative.

(e) Section 7.5 of this bill incorporates amendments to Section 368 of the Penal Code proposed by this bill, AB 880, and SB 1715. 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) each bill amends Section 368 of the Penal Code, (3) AB 1955 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 880 and SB 1715, in which case Section 368 of the Penal Code, as amended by Section 7 of this bill, shall remain operative only until the operative date of AB 880 and SB 1715, at which time Section 7.5 of this bill shall become operative, and Sections 7.1 to 7.4, inclusive, and Sections 7.6 and 7.7 of this bill shall not become operative.

(f) Section 7.6 of this bill incorporates amendments to Section 368 of the Penal Code proposed by this bill, AB 1955, and SB 1715. 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) each bill amends Section 368 of the Penal Code, (3) AB 880 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 1955 and SB 1715, in which case Section 368 of the Penal Code, as amended by Section 7 of this bill, shall remain operative only until the operative date of AB 1955 and SB 1715, at which time Section 7.6 of this bill shall become operative, and Sections 7.1 to 7.5, inclusive, and Section 7.7 of this bill shall not become operative.

(g) Section 7.7 of this bill incorporates amendments to Section 368 of the Penal Code proposed by this bill, AB 880, AB 1955, and SB 1715. It shall only become operative if (1) all four bills are enacted and become effective on or before January 1, 1999, but this bill becomes operative first, (2) each bill amends Section 368 of the Penal Code, and (3) this bill is enacted after AB 880, AB 1955, and SB 1715, in which case Section 368 of the Penal Code, as amended by Section 7 of this bill, shall remain operative only until the operative date of AB 880, AB 1955, and SB 1715, at which time Section 7.7 of this bill shall

become operative, and Sections 7.1 to 7.6, inclusive, of this bill shall not become operative.

SEC. 30. Section 8.5 of this bill incorporates amendments to Section 422.75 of the Penal Code proposed by both this bill and AB 1999. 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 422.75 of the Penal Code, and (3) this bill is enacted after AB 1999, in which case Section 422.75 of the Penal Code, as amended by Section 8 of this bill, shall remain operative only until the operative date of AB 1999, at which time Section 8.5 of this bill shall become operative.

SEC. 31. Section 11.5 of this bill incorporates amendments to Section 1170.11 of the Penal Code proposed by both this bill and SB 334. 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 1170.11 of the Penal Code, and (3) this bill is enacted after SB 334, in which case Section 1170.11 of the Penal Code, as amended by Section 11 of this bill, shall remain operative only until the operative date of SB 334, at which time Section 11.5 of this bill shall become operative.

SEC. 32. Section 13.5 of this bill incorporates amendments to Section 1192.7 of the Penal Code proposed by both this bill and AB 357. 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 1192.7 of the Penal Code, and (3) this bill is enacted after AB 357, in which case Section 1192.7 of the Penal Code, as amended by Section 13 of this bill, shall remain operative only until the operative date of AB 357, at which time Section 13.5 of this bill shall become operative.

SEC. 33. Section 14.5 of this bill incorporates amendments to Section 1269b of the Penal Code proposed by both this bill and SB 2139. 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 1269b of the Penal Code, and (3) this bill is enacted after SB 2139, in which case Section 1269b of the Penal Code as amended by SB 2139, shall remain operative only until the operative date of this bill, at which time Section 14.5 of this bill shall become operative, and Section 14 of this bill shall not become operative.

SEC. 34. Section 17.5 of this bill incorporates amendments to Section 3003 of the Penal Code proposed by both this bill and AB 1646. 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 3003 of the Penal Code, and (3) this bill is enacted after AB 1646, in which case Section 3003 of the Penal Code, as amended by Section 17 of this bill, shall remain operative only until the operative date of AB 1646, at which time Section 17.5 of this bill shall become operative.

SEC. 35. Section 18.5 of this bill incorporates amendments to Section 3057 of the Penal Code proposed by both this bill and AB 1444. 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 3057 of the Penal Code, and (3) this bill is enacted after AB 1444, in which case Section 3057 of the Penal Code, as amended by Section 18 of this bill, shall remain operative only until the operative date of AB 1444, at which time Section 18.5 of this bill shall become operative.

SEC. 36. Section 19.5 of this bill incorporates amendments to Section 12022.53 of the Penal Code proposed by both this bill and AB 1290. 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 12022.53 of the Penal Code, and (3) this bill is enacted after AB 1290, in which case Section 12022.53 of the Penal Code, as amended by Section 19 of this bill, shall remain operative only until the operative date of AB 1290, at which time Section 19.5 of this bill shall become operative.

SEC. 37. Section 20.5 of this bill incorporates amendments to Section 676 of the Welfare and Institutions Code proposed by both this bill and AB 1290. 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 676 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 1290, in which case Section 676 of the Welfare and Institutions Code, as amended by Section 20 of this bill, shall remain operative only until the operative date of AB 1290, at which time Section 20.5 of this bill shall become operative.

SEC. 38. Section 21.5 of this bill incorporates amendments to Section 707 of the Welfare and Institutions Code proposed by both this bill and AB 1290. 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 707 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 1290, in which case Section 707 of the Welfare and Institutions Code, as amended by Section 21 of this bill, shall remain operative only until the operative date of AB 1290, at which time Section 21.5 of this bill shall become operative.

SEC. 39. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district 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. 40. 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 correct, clarify, and conform certain criminal law statutes at the earliest possible time so as to avoid confusion and misinterpretation of their provisions, it is necessary for this act to take effect immediately.

CHAPTER 937

An act to add Part 9 (commencing with Section 998) to Division 3.6 of Title 1 of the Government Code, relating to the Department of Fish and Game, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 28, 1998. Filed with Secretary of State September 28, 1998.]

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

SECTION 1. Part 9 (commencing with Section 998) is added to Division 3.6 of Title 1 of the Government Code, to read:

PART 9. LAKE DAVIS NORTHERN PIKE ERADICATION PROJECT RELIEF ACCOUNT

998. The Legislature finds and declares that in order to alleviate the economic and social disruptions arising out of the Lake Davis Northern Pike Eradication Project, it is necessary and appropriate to create a special account within the Special Deposit Fund for payment of economic and infrastructure assistance to the City of Portola and the County of Plumas, and for all other claims arising out of that project. The Legislature hereby appropriates to the office of the Attorney General in the Department of Justice the sum of nine million one hundred seventy-six thousand dollars ($9,176,000) from the General Fund to the special account within the Special Deposit Fund, to be known as the Lake Davis Northern Pike Eradication Project Relief Account, to pay these claims as apportioned in Section 998.1.

It is the purpose of this part to compensate the above claimants without regard to legal liability, fault, or responsibility, and without the necessity of litigation against the State of California, or its agencies, officers, or employees. It is the further intent of the Legislature that all valid claims shall be negotiated for settlement

purposes fairly and promptly. Nothing in this part shall be construed as an admission of legal liability, responsibility, or fault on the part of the State of California, or any of its agencies, officers, or employees.

998.1. (a) The sum of two million eight hundred sixty-seven thousand six hundred sixty-seven dollars ($2,867,667) is hereby transferred from the Lake Davis Northern Pike Eradication Project Relief Account to the City of Portola to provide economic and infrastructure assistance and in satisfaction of the City of Portola's claims against the State of California or its agencies, officers, and employees for all alleged damage or injury it claims to have suffered as a result of the Lake Davis Northern Pike Eradication Project. This sum of money is being paid in accordance with the terms of a settlement agreement and release to be entered into between the City of Portola and the State of California, and shall be reduced by any amounts already expended by the State of California or the Department of Fish and Game pursuant to any agreement with the City of Portola concerning the provision of alternate water supplies. With respect to the Lake Davis Northern Pike Eradication Project, and except as otherwise provided in that agreement, all obligations imposed upon the State of California by any such memoranda and by Section 116751 of the Health and Safety Code shall terminate upon enactment of this part.

(b) The sum of two million fifty-eight thousand three hundred thirty-three dollars ($2,058,333) is hereby transferred from the Lake Davis Northern Pike Eradication Project Relief Account to the County of Plumas to provide economic and infrastructure assistance and in satisfaction of the County of Plumas' and Plumas County Flood Control and Water Conservation District's claims against the State of California and its agencies, officers, and employees for all alleged damage or injury they claim to have suffered as a result of the Lake Davis Northern Pike Eradication Project. This sum of money is being paid in accordance with the terms of a settlement agreement and release between the County of Plumas and Plumas County Flood Control and Water Conservation District and the State of California, and shall be reduced by any amounts already expended by the State of California or the Department of Fish and Game pursuant to any agreement with the County of Plumas concerning the provision of alternate water supplies. With regard to the Lake Davis Northern Pike Eradication Project, and except as provided in that agreement, all obligations imposed upon the State of California by such Memoranda and by Section 16751 of the Health and Safety Code, shall terminate upon enactment of this part.

(c) The sum of two hundred fifty thousand dollars ($250,000) shall be transferred from the Lake Davis Northern Pike Eradication Project Relief Account to the County of Plumas to be used as matching funds for the purpose of obtaining a loan or grant from the State Department of Health Services pursuant to Chapter 4.5 (commencing with Section 116760) of Part 12 of Division 104 of the

Health and Safety Code to make improvements to the Lake Davis Water Treatment Plant. The funds shall be deposited in an interest bearing account and held until the county enters into an agreement with the State Department of Health Services for a loan or grant. If the improvements requested by the County of Plumas are not eligible for a loan or grant, the sum of two hundred fifty thousand dollars ($250,000), plus any interest earned, shall be returned to the General Fund.

(d) The sum of four million dollars ($4,000,000) shall be available from the Lake Davis Northern Pike Eradication Project Relief Account to pay all other claims including, but not limited to, claims for personal injury, property damage, or business loss, arising out of the Lake Davis Northern Pike Eradication Project. Any unused funds, plus any interest earned, shall revert to the General Fund.

998.2. (a) Any person or business may file an application with the State Board of Control for compensation based on personal injury, property loss, business loss, or other economic loss, claimed to have been incurred as a result of the Lake Davis Northern Pike Eradication Project. Any application made pursuant to this section shall be presented to the board in accordance with this division. A late claim may be presented to the board pursuant to the procedure specified by Section 911.4. Each such application shall contain in addition to the information required by Section 910, all of the following:

(1) The legal name of any business claiming a loss, as well as the names of the owners and officers of the business; for any property owner claiming diminution of property value, the names of all persons holding a legal interest in the property; and the name of any person claiming to have suffered personal injury.

(2) An authorization permitting the office of the Attorney General or its designee to obtain relevant medical, employment, business, property, and tax records.

(3) A brief statement describing when, where, and how the injury, loss, or diminution in market value occurred.

(b) Upon receipt of an application presented pursuant to this section from the State Board of Control, the office of the Attorney General or its designee shall examine the application and may require the applicant to submit additional information or documents which are necessary to verify and evaluate the application. The office of the Attorney General or its designee shall attempt to resolve an application within six months from the effective date of this part unless this period of time is extended by mutual agreement between the office of the Attorney General or its designee and the applicant. Any application that does not result in a final settlement agreement within the resolution period shall be deemed denied, allowing the claimant to proceed with a court action pursuant to Chapter 2 (commencing with Section 945) of Part 4.

(c) The office of the Attorney General or its designee shall adopt guidelines in consultation with one representative designated by the City of Portola, one representative designated by the County of Plumas, and one member of the public to be selected jointly by the city and the county. Any guidelines so developed shall be used to evaluate and settle claims filed pursuant to this part. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2, any regulations adopted thereunder by the Attorney General in order to implement this section shall not be subject to the review and approval of the Office of Administrative Law, nor subject to 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) of Part 1 of Division 3 of Title 2).

(d) Any court action following denial of an application, including denial pursuant to subdivision (b), shall be filed within six months of the mailing date of the board's rejection or denial of the application or the applicant's rejection of the board's offer pursuant to Section 945.6 or subdivision (b) of Section 998.3.

(e) Any claim pursuant to Part 3 (commencing with Section 900) made before or after the effective date of this part for personal injury, property loss, business loss, or other economic loss resulting from the Lake Davis Northern Pike Eradication Project against the State of California, it agencies, officers, or employees, shall be deemed to be an application under this part and is subject to the provisions set forth in this part. Additionally, any application made pursuant to this part shall be deemed to be in compliance with Part 3 (commencing with Section 900).

(f) Notwithstanding any other provision of law, the resolution or denial of an application pursuant to this part is a condition precedent to the filing of any action for personal injury, property damage, business loss, or other economic loss, resulting from the Lake Davis Project in any court of the State of California, against the State of California, it agencies, officers, or employees. Any suit filed by an applicant in any court of this state against the State of California or its agencies, officers, or employees shall be stayed pending resolution or denial of the application.

998.3. (a) If the office of the Attorney General or its designee determines that an applicant pursuant to this part is eligible for compensation, upon receipt of all information it deems necessary to evaluate the applicant's loss, it shall make an offer in an amount it deems to be just and fair.

(b) The offer shall be made to the applicant in writing, who shall either accept or reject the offer in writing within 30 days of receipt thereof. Failure to respond to the offer shall be deemed a rejection. If the applicant accepts the offer, the applicant shall be deemed to have waived all other legal remedies against the State of California, it agencies, officers, and employees. If the applicant rejects the offer,

all other legal remedies may be pursued against the State of California, it agencies, officers, and employees. Any notice of offer or rejection shall contain the notice required pursuant to subdivision (b) of Section 911.8.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to provide essential relief to the City of Portola, the County of Plumas, and its businesses and citizens for losses sustained as a result of the Lake Davis Northern Pike Eradication Project that took place on or about October 15, 1997, it is necessary for this act to take effect immediately.

CHAPTER 938

An act to add Section 44011.3 to the Health and Safety Code, and to amend Sections 4000.3 and 25108 of the Vehicle Code, relating to air resources.

[Approved by Governor September 28, 1998. Filed with Secretary of State September 29, 1998.]

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

SECTION 1. Section 44011.3 is added to the Health and Safety Code, to read:

44011.3. Every motor vehicle that is subject to testing pursuant to this chapter may be pretested. As used in this section, a pretest is a smog inspection in which the motor vehicle is submitted to some or all of the required elements of the emissions inspection as specified in Section 44012, the results of which will not be reported to the Department of Motor Vehicles and for which a certificate will not be issued. A person choosing to have his or her vehicle pretested has the right to have a complete pretest of the vehicle unless the person requests a partial pretest. If the person requests a partial pretest, the licensed technician or an authorized representative of the licensed smog check station shall inform the vehicle owner that the partial pretest may not indicate the likelihood of the vehicle passing a subsequent official inspection.

SEC. 2. Section 4000.3 of the Vehicle Code is amended to read:

4000.3. (a) Except as otherwise provided in Section 44011 of the Health and Safety Code, the department shall require biennially, upon renewal of registration of any motor vehicle subject to Part 5 (commencing with Section 43000) of Division 26 of the Health and Safety Code, a valid certificate of compliance issued in accordance with Section 44015 of the Health and Safety Code. The department,

in consultation with the Department of Consumer Affairs, shall develop a schedule under which vehicles shall be required biennially to obtain certificates of compliance.

(b) The Department of Consumer Affairs shall provide the department with information on vehicle classes that are subject to the motor vehicle inspection and maintenance program.

(c) The department shall include any information pamphlet provided by the Department of Consumer Affairs with notification of the inspection requirement and with its renewal notices. The information pamphlet in the renewal notice shall also notify the owner of the motor vehicle of the right to have the vehicle pretested pursuant to Section 44011.3 of the Health and Safety Code.

SEC. 3. Section 25108 of the Vehicle Code is amended to read:

25108. (a) Any motor vehicle may be equipped with not more than two amber turn-signal pilot indicators mounted on the exterior. The light output from any indicator shall not exceed five candlepower unless a provision is made for operating the indicator at reduced intensity during darkness in which event the light output shall not exceed five candlepower during darkness or 15 candlepower at any other time. The center of the beam shall be projected toward the driver.

(b) Any vehicle may be equipped with pilot indicators visible from the front to monitor the functioning or condition of parts essential to the operation of the vehicle or of equipment attached to the vehicle that is necessary for protection of the cargo or load. The pilot indicators shall be steady-burning, having a projected lighted lens area of not more than three-quarters of a square inch and have a light output of not more than five candlepower. The pilot indicator may be of any color except red.

(c) Other exterior pilot indicators of any color may be used for monitoring exterior lighting devices, provided that the area of each indicator is less than 0.20 square inches, the intensity of each indicator does not exceed 0.10 candlepower, and the color red is not visible to the front.

(d) Any towed vehicle may be equipped with an exterior-mounted pilot lamp used only to indicate the functional status of an antilock braking system when the following conditions are met:

(1) The indicator lamp is designed and located so that it will be readily visible, with the assistance of a rearview mirror if necessary, to the driver of the towing motor vehicle.

(2) The indicator lamp has a light source not exceeding five candlepower. The light shall not show to the sides or rear of the vehicle and the indicator lamp may emit any color except red.

(e) (1) Notwithstanding any other provision of law, any motor vehicle may be equipped with not more than two exterior-lighted data monitors that transmit information to the driver of the vehicle

regarding the efficient or safe operation, or both the efficient and safe operation, of the vehicle.

(2) Data monitors shall comply with all of the following conditions:

(A) Be mounted to the vehicle in a manner so that they are readily visible to the driver of the vehicle when the driver is seated in the normal driving position. Data monitors shall not be designed to convey information to any person other than the driver of the vehicle.

(B) Be limited in size to not more than two square inches of lighted area each.

(C) Not emit a light brighter than reasonably necessary to convey the intended information.

(D) Not project a glaring light to the driver or, to other motorists, or to any other person.

(3) Data monitors may incorporate flashing or changing elements only as necessary to convey the intended information. Data monitors shall not resemble any official traffic-control device or required lighting device or be combined with any required lighting device.

(4) Data monitors may display any color, except that the color red shall not be visible to the front of the vehicle.

CHAPTER 939

An act to add Chapter 6 (commencing with Section 104310) to Part 1 of Division 103 of the Health and Safety Code, relating to prostate cancer.

[Approved by Governor September 28, 1998. Filed with Secretary of State September 29, 1998.]

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

SECTION 1. Chapter 6 (commencing with Section 104310) is added to Part 1 of Division 103 of the Health and Safety Code, to read:

CHAPTER 6. THE PROSTATE CANCER ACT OF 1998

104310. This chapter shall be known and may be cited as the Prostate Cancer Act of 1998.

104312. The Legislature finds and declares all of the following:

(a) California has the highest incidence of and death from prostate cancer, and due to the increased public awareness of the disease, the timing is appropriate to establish programs for prostate cancer education and early detection services for uninsured men. Despite the advances in the treatment and detection of prostate cancer, the

death rate of this disease continues to climb at an alarming rate--a rate higher than breast cancer and many other high profile diseases.

(b) Approximately 200,000 new cases of prostate cancer will be diagnosed this year.

(c) Prostate cancer is the most common cancer in men.

(d) Prostate cancer has led to an estimated 38,000 deaths nationally in 1994 and is the second-leading cause of cancer death in men.

(e) Nationally, the incidence of prostate cancer increased 50 percent between 1980 and 1990.

(f) Prostate cancer diagnosis in California nearly doubled over the five-year period covered by the recently published California Cancer Registry, from 11,900 new cases in 1988 to 22,200 in 1992. The age-adjusted incidence rate increased by 65 percent, from 98.6 new cases per 100,000 males in 1988 to 163 in 1992.

(g) African Americans have a 30 percent higher risk of developing prostate cancer than whites, which is the highest risk of any race or ethnic group.

(h) About 60 percent of all prostate cancers are discovered before they have spread.

(i) The cure rate for prostate cancer, if detected before metastasis, is 84 percent.

(j) The majority of commercial managed care plans offer prostate cancer screening for their members.

(k) The employment of prostate-specific antigen assays as common medical practice within suspect categories will enhance early detection of prostate cancer.

104314. (a) The Prostate Cancer Fund is hereby established in the State Treasury. It is the intent of the Legislature that the fund be funded by an annual appropriation, when funds are available, in the Budget Act.

(b) The moneys in the Prostate Cancer Fund shall be expended by the State Department of Health Services, upon appropriation by the Legislature, for the purpose of the Prostate Cancer Screening Program established by Section 104315.

104315. (a) The Prostate Cancer Screening Program shall be established in the State Department of Health Services.

(b) The program shall apply to both of the following:

(1) Uninsured men 50 years of age and older.

(2) Uninsured men between 40 and 50 years of age who are at high risk for prostate cancer, upon the advice of a physician or upon the request of the patient.

(c) For purposes of this chapter, "uninsured" means not covered by any of the following:

(1) Medi-Cal.

(2) Medicare.

(3) A health care service plan contract or policy of disability insurance that covers screening for prostate cancer for men 50 years

of age and older, and for men between 40 and 50 years of age who are at high risk for prostate cancer upon the advice of a physician or upon the request of the patient.

(4) Any other form of health care coverage that covers screening for prostate cancer for men 50 years of age and older, and for men between 40 and 50 years of age who are at high risk for prostate cancer upon the advice of a physician or upon the request of the patient.

(d) The program shall include all of the following:

(1) Screening of men for prostate cancer as an early detection health care measure.

(2) After screening, medical referral of screened men and services necessary for definitive diagnosis.

(3) If a positive diagnosis is made, then assistance and advocacy shall be provided to help the person obtain necessary treatment.

(4) Outreach and health education activities to ensure that uninsured men are aware of and appropriately utilize the services provided by the program.

(e) Any entity funded by the program shall coordinate with other local providers of prostate cancer screening, diagnostic, followup, education, and advocacy services to avoid duplication of effort. Any entity funded by the program shall comply with any applicable state and federal standards regarding prostate cancer screening.

(f) Administrative costs of the department shall not exceed 10 percent of the funds allocated to the program. Indirect costs of the entities funded by this program shall not exceed 12 percent. The department shall define ''indirect costs'' in accordance with applicable state and federal law.

(g) Any entity funded by the program shall collect data and maintain records that are determined by the department to be necessary to facilitate the state department's ability to monitor and evaluate the effectiveness of the entities and the program. Commencing with the program's second year of operation, the department shall submit an annual report to the Legislature and any other appropriate entity. The report shall describe the activities and effectiveness of the program and shall include, but not be limited to, the following types of information regarding those served by the program:

(1) The number.

(2) The ethnic, geographic, and age breakdown.

(3) The stages of presentation.

(4) The diagnostic and treatment status.

(h) The department or any entity funded by the program shall collect personal and medical information necessary to administer the program from any individual applying for services under the program. The information shall be confidential and shall not be disclosed other than for purposes directly connected with the administration of the program or except as otherwise provided by

law or pursuant to prior written consent of the subject of the information.

(i) The department or any entity funded by the program may disclose the confidential information to medical personnel and fiscal intermediaries of the state to the extent necessary to administer the program, and to other state public health agencies or medical researchers if the confidential information is necessary to carry out the duties of those agencies or researchers in the investigation, control, or surveillance of prostate cancer.

(j) The department shall adopt regulations to implement the Prostate Cancer Screening Program in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(k) This section shall not be implemented unless and until funds are appropriated for this purpose in the annual Budget Act.

CHAPTER 940

An act to add Section 49471.5 to the Education Code, relating to school athletic injuries.

[Approved by Governor September 28, 1998. Filed with Secretary of State September 29, 1998.]

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

SECTION 1. Section 49471.5 is added to the Education Code, to read:

49471.5. (a) If funding is made available for this purpose, the Legislature requests the University of California to design a study and conduct a representative sampling of pupil injuries from participation in high school athletic events over a period of three school years commencing with the 2000–01 school year. It is further the intent of the Legislature that the University of California consult with the State Board of Education and the State Department of Education regarding the design of the study and regarding the university's procedure for ensuring the success of the project. The data shall be compiled and analyzed so as to permit valid conclusions to be drawn and recommendations to be made regarding, at a minimum, all of the following:

(1) The actual statewide frequency of injuries and reinjuries.

(2) Methods for creating intervention programs to decrease the incidence of injuries.

(3) The number and extent of training of primary health personnel responsible for the care of athletes at the high schools.

(4) Possible methods for decreasing health care costs due to improper evaluation and care of athletic injuries.

(5) Identifying risk factors for high school athletes including factors relating to the severity of injuries, the immediate evaluation, care, and treatment of injuries, and the time loss associated with injuries.

(6) Recommended programs, policies, and procedures designed to provide long-term solutions for preventing injuries to high school athletes.

(7) Developing an athletic safety plan, including, but not limited to, written safety standards of care for high school athletes.

(b) The completed project, including an executive summary, key findings, conclusions, and recommendations, shall be disseminated to all public high schools in the state, and shall be submitted to the Legislature and the State Board of Education by December 1, 2003.

(c) The annual General Fund costs of the program shall not exceed seventy-five thousand dollars ($75,000).

(d) This section shall apply to the University of California only if its participation is approved by resolution of the Regents of the University of California.

SEC. 2. It is the intent of the Legislature that funds will be appropriated in the annual Budget Act for purposes of Section 49471.5 of the Education Code.

CHAPTER 941

An act to add Section 17018.7 to the Education Code, relating to school facilities.

[Approved by Governor September 28, 1998. Filed with Secretary of State September 29, 1998.]

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

SECTION 1. Section 17018.7 is added to the Education Code, to read:

17018.7. (a) Notwithstanding any other provision of law to the contrary, a school district that has, within the previous 24-month period, constructed or otherwise acquired school facilities with 100 percent local funding, may apply for funding for the construction of a gymnasium or multipurpose room on the site where it constructed or otherwise acquired school facilities with 100 percent local funding.

(b) If the State Allocation Board determines that the schoolsite does not have adequate gymnasium or multipurpose room facilities, the board may approve the application pursuant to this section.

(c) For an application approved pursuant to this section, the board shall grant the school district a credit against its local matching share requirement of up to 50 percent of the costs of the project or the total local funds expended by the school district on any school

facilities funded by 100 percent local funds within the immediately preceding 24-month period, whichever is less.

(d) For an application approved under this section, the project shall be accorded the priority status that is otherwise accorded under Section 17017.7 to a project for which state funding is requested for only 50 percent of the costs.

(e) As used in this section "100 percent local funding" includes construction or acquisition of a school facility with 40 percent funding from the general fund of the school district and with the remainder of the local funding from the sale of surplus school property.

CHAPTER 942

An act to amend Section 42239 of the Education Code, relating to education, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 28, 1998. Filed with Secretary of State September 29, 1998.]

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

SECTION 1. Section 42239 of the Education Code is amended to read:

42239. For the 1984–85 fiscal year and each fiscal year thereafter, the county superintendent shall compute an amount for each school district's summer school attendance in the following manner:

(a) Divide the amount received on account of average daily attendance pursuant to Section 42238.6 in the 1983–84 fiscal year by the 1983–84 fiscal year hours of attendance. This amount shall be increased annually by the percentage increase granted to school districts for base revenue limit increases.

(b) Multiply the amount computed in subdivision (a) by the lesser of the 1983–84 fiscal year hours of summer school attendance or the actual fiscal year hours of summer school attendance computed pursuant to paragraph (1) of subdivision (d).

(c) If the fiscal year hours of summer school attendance computed pursuant to subdivision (d) exceed the hours of summer school attendance specified in subdivision (b), multiply the increased hours by one dollar and fifty cents ($1.50). This amount shall be increased annually by the percentage increase granted to school districts for base revenue limit increases.

(d) Commencing in the 1984–85 fiscal year, summer school attendance shall be the sum of paragraphs (1), (2), and (3):

(1) The hours of attendance in the categories identified in Section 42238.6 as it read in the 1983–84 fiscal year.

(2) Any summer school hours of attendance for mathematics, science, English as a second language, or other core curriculum areas designated by the Superintendent of Public Instruction.

(3) Hours of general, vocational work experience education, if the school district certifies to the Superintendent of Public Instruction that all courses identified in paragraphs (1) and (2) have been offered to meet student demand and if the statewide demand, up to the amounts specified in subdivision (e), as amended by the annual Budget Act, and the amounts specified in the appropriation made for the purposes of this section in the annual Budget Act, has been met for all courses identified in paragraphs (1) and (2). The total statewide amount apportioned for general vocational work experience summer school programs shall not exceed one hundred thousand dollars ($100,000) in any fiscal year. If the total statewide entitlement pursuant to this paragraph exceeds one hundred thousand dollars ($100,000), the State Department of Education shall apportion funds on a pro rata basis. As used in this section, reimbursement of "hours of general vocational work experience" shall be based on the number of hours of attendance for that work experience course, at a rate equal to that for a course in paragraph (2) of the same number of credits.

(e) (1) Except as otherwise provided in paragraph (3) of subdivision (d), a school district's maximum entitlement for reimbursement for pupil attendance in summer school programs offered pursuant to paragraphs (2) and (3) of subdivision (d) shall be an amount equal to 5 percent of the district's total enrollment for the prior fiscal year times 120 hours, times the hourly rate for the current fiscal year determined pursuant to subdivision (c).

(2) A district may enroll more than 5 percent of its students, or may enroll students for more than 120 hours per year in summer school programs offered pursuant to paragraphs (2) and (3) of subdivision (d), as long as the total state apportionment to the district for those programs does not exceed the amount computed pursuant to paragraph (1). A district shall earn its entitlement at the per pupil hourly rate pursuant to subdivision (c).

(f) (1) Commencing in the 1998–99 fiscal year, except as otherwise provided in paragraph (3) of subdivision (d), a school district's maximum entitlement for reimbursement for pupil attendance in summer school programs offered pursuant to paragraphs (2) and (3) of subdivision (d) shall be an amount equal to 7 percent of the district's total enrollment for the prior fiscal year multiplied by 120 hours, multiplied by the hourly rate for the current fiscal year determined pursuant to subdivision (c).

(2) Notwithstanding paragraph (1) of subdivision (e), or any other provision of law, the Superintendent of Public Instruction shall reallocate to any school district any unexpended balance of the appropriations made for the current fiscal year for core academic summer school programs, pursuant to paragraph (2) of subdivision

(d) to fund any shortfall in funding needed to provide supplemental remedial services required pursuant to subdivision (a) of Section 37252.5, as added by Assembly Bill 1639 of the 1997–98 Regular Session. If funds are not needed for that purpose, the Superintendent of Public Instruction shall reallocate to any school district any unexpended balance for reimbursement for actual pupil attendance in summer school programs authorized under paragraph (2) of subdivision (d). In no event shall any district receive reimbursement for pupil attendance in summer school programs in excess of 10 percent of the district's enrollment for the prior fiscal year multiplied by 120 hours, multiplied by the hourly rate for the current fiscal year.

(3) After any reallocation is made pursuant to paragraph (2), the Superintendent of Public Instruction shall reallocate any unexpended balance of the appropriation specified in the annual Budget Act for the purpose of this section in the following priority:

(A) For the purposes of funding any deficiencies, for the current fiscal year, in remedial summer school programs authorized pursuant to paragraph (1) of subdivision (d).

(B) For the purposes of funding supplemental educational services for the current fiscal year authorized pursuant to subdivision (b) of Section 37252.5, as added by Assembly Bill 1639 of the 1997–98 Regular Session.

(C) For the purposes of funding general vocation work experience education for the current fiscal year authorized pursuant to paragraph (3) of subdivision (d).

(g) Notwithstanding any other provision of law, classes may be convened pursuant to this section at the hours and for the length of time during the schoolday, and at the period and for the length of time during the school year, as may be determined by the governing board of the school district.

SEC. 2. The sum of seventy-five million dollars ($75,000,000) is hereby appropriated from the General Fund to the Superintendent of Public Instruction for allocation to school districts for the purposes of supplemental instructional programs established pursuant to Section 37252.5 of the Education Code, as added by Assembly Bill 1639 of the 1997–98 Regular Session.

SEC. 3. The sum of thirty million dollars ($30,000,000) is hereby appropriated from the General Fund to the Department of Education in augmentation of funds appropriated in Schedule (a) of Item 6110-104-0001 of Section 2.00 of the Budget Act of 1998 (Chapter 324, Statutes of 1998). These funds shall be used to provide remedial instruction to pupils in grades 7 to 9, inclusive, who have been retained or identified as being at risk of retention pursuant to Section 48070.5, as added by Assembly Bill 1626 of the 1997–98 Regular Session.

SEC. 4. The sum of ninety-four million one hundred forty-six thousand dollars ($94,146,000) is hereby appropriated from the General Fund to the Superintendent of Public Instruction for

allocation to school districts, county offices of education, and other agencies receiving funding from funds appropriated pursuant to Item 6110-230-0001 of Section 2.00 of the Budget Act of 1998 (Chapter 324, Statutes of 1998) for providing cost-of-living adjustments and enrollment growth funding, to be distributed to each program that is funded under Item 6100-230-0001 in an amount that is proportionate to the base funding level of the program in the 1997–98 fiscal year, excluding Partnership Academies and instructional materials for kindergarten and grades 1 to 12, inclusive.

SEC. 5. For the purpose of making the computations required by Section 8 of Article XVI of the California Constitution, the appropriation made by Sections 2, 3, and 4 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 shall be 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.

SEC. 6. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to implement the summer school programs funded by this act as expeditiously as possible, it is necessary that this act take effect immediately.

CHAPTER 943

An act to amend Section 48200.7 of, and to repeal and add Section 41601.1 of, the Education Code, relating to the Compton Unified School District, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 28, 1998. Filed with Secretary of State September 29, 1998.]

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

SECTION 1. Section 41601.1 of the Education Code is repealed.

SEC. 2. Section 41601.1 is added to the Education Code, to read:

41601.1. (a) The attendance of pupils subject to Section 48200.7 in extended year classes provided by a school district exclusively for those pupils shall be excluded from the determination of average daily attendance pursuant to Section 41601.

(b) The average daily extended year attendance of pupils subject to Section 48200.7 in classes provided by a school district exclusively

for those pupils, and consistent with subdivision (a) of Section 46300, shall be determined by dividing the total number of days of extended year attendance by a divisor of 180.

(c) Units of average daily extended year attendance determined pursuant to this section, not to exceed 675 units, shall be deemed to be units of regular average daily attendance for the purposes of all calculations of funding based on average daily attendance, except that for the purposes of subdivision (d) of Section 41204, these units of average daily extended year attendance shall not be used for the purpose of calculating "changes in enrollment" pursuant to paragraph (2) of subdivision (b) of Section 8 of Article XVI of the California Constitution.

(d) As a condition to the receipt of funding based on average daily extended year attendance determined pursuant to the provisions of this section, a school district shall provide to all pupils subject to Section 48200.7, while those pupils are attending extended year classes provided exclusively for them, at least an average of:

(1) Two hundred minutes per day in kindergarten.

(2) Two hundred eighty minutes per day in grades 1 to 3, inclusive.

(3) Three hundred minutes per day in grades 4 to 8, inclusive.

(4) Three hundred sixty minutes per day in grades 9 to 12, inclusive.

(e) A school district providing extended year classes pursuant to this section shall waive the right to conduct staff development days in lieu of instructional days that exceed the number of staff development days for which attendance was claimed during the 1997–98 school year, and shall waive any right to receive average daily attendance credit for any staff development days that exceed the number of staff development days for which attendance was claimed during the 1997–98 school year, including, but not limited to, staff development days authorized pursuant to Sections 44670.6, 52022, 52854, and 56242.

(f) Funds allocated for the extension of the school year in the Compton Unified School District pursuant to this section and Section 48200.7 may be utilized only for purposes that are directly related to the purposes described in Section 48200.7.

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

SEC. 3. Section 48200.7 of the Education Code is amended to read:

48200.7. (a) The State Department of Education shall identify the three lowest performing elementary schools in the Compton Unified School District for purposes of extending the school year for pupils enrolled in kindergarten or grades 1 and 2 and for those pupils in any of grades 3 to 5, inclusive, who are performing in mathematics or English language arts two or more grade levels below the grade

in which those pupils are enrolled as determined under subdivision (d).

(b) Beginning with the 1998–99 school year, the Compton Unified School District may identify schools of the district, in addition to those identified pursuant to subdivision (a), that are among the lowest performing schools in the district, and may provide any pupil enrolled in kindergarten and grades 1 to 12, inclusive, in a school identified pursuant to this subdivision who is performing in mathematics or English language arts at two or more grade levels below the grade in which that pupil is enrolled as determined pursuant to subdivision (d), with extended school year instruction pursuant to Section 41601.1.

(c) Notwithstanding subdivision (b) of this section and Section 41601.1, the amount of funding claimed by the district for extended year instruction shall not in any year exceed twice the amount claimed pursuant to this section in the 1997–98 fiscal year as adjusted each year by the inflation adjustment determined pursuant to Section 42238.1.

(d) The determination that a pupil is performing two or more grade levels below the grade in which that pupil is enrolled, shall be based on any combination of the following:

(1) The California Achievement Test-Form E.

(2) The Spanish assessment of basic education.

(3) Proficiency tests required for graduation.

(4) District criterion reference tests based on state curriculum guides.

(5) The STAR test.

(e) The Compton Unified School District shall test all pupils in kindergarten and grades 1 to 12, inclusive, in its lowest performing schools identified pursuant to subdivisions (a) and (b) prior to those pupils beginning an extended school year program under this section. At the end of the school year the school district shall again test the pupils in kindergarten and grades 1 to 12, inclusive, to determine the grade level at which those pupils are performing.

(f) The State Department of Education shall approve each of the following areas in each elementary school identified as low performing pursuant to subdivision (a):

(1) Curricula.

(2) Testing instruments.

(3) Schoolday length.

(4) Teacher selection, teacher mentoring, and staff development processes.

(g) The State Department of Education shall review teacher compensation, including salary and benefits, in each elementary school identified as low performing pursuant to subdivision (a).

(h) The State Department of Education shall also collect data as to each of the following items for each school in subdivisions (a) and (b):

(1) Instructional materials used by, and made available to, the school.

(2) Teacher capacity.

(3) Any other baseline data deemed necessary by the department.

(i) Instruction provided to pupils subject to this section during schooldays in excess of schooldays offered to other pupils shall be devoted to instruction in basic skills in mathematics and English language arts.

(j) The office of the Legislative Analyst, on or before April 1, 2000, shall evaluate or may contract for an independent evaluation to determine the effectiveness of the extended school year curriculum, instructional program, and materials provided pursuant to this section and funded through Section 41601.1 in improving pupil academic outcomes, based on pupil test data and data collected pursuant to subdivision (h).

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

SEC. 4. Sections 1, 2, and 3 of this act shall be implemented as if they had been in effect for the entire 1998–99 fiscal year.

SEC. 5. The Legislature finds and declares that a special law is necessary and that a general law cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the unique circumstances of the Compton Unified School District. The facts constituting the special circumstances that distinguish the district from other school districts are:

Pupil performance has been historically and consistently among the poorest in the state.

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 facilitate the provision of appropriate educational services for pupils in the Compton Unified School District, it is necessary that this bill take effect immediately.

CHAPTER 944

An act to amend Section 803 of, and to add Section 801.6 to, the Penal Code, relating to elder abuse.

[Approved by Governor September 28, 1998. Filed with Secretary of State September 29, 1998.]

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

SECTION 1. Section 801.6 is added to the Penal Code, to read:

801.6. Notwithstanding any other limitation of time described in this chapter, prosecution for any offense proscribed by Section 368, except for a violation of any provision of law proscribing theft or embezzlement, may be filed at any time within five years from the date of occurrence of such offense.

SEC. 2. Section 803 of the Penal Code is amended to read:

803. (a) Except as provided in this section, a limitation of time prescribed in this chapter is not tolled or extended for any reason.

(b) No time during which prosecution of the same person for the same conduct is pending in a court of this state is a part of a limitation of time prescribed in this chapter.

(c) A limitation of time prescribed in this chapter does not commence to run until the discovery of an offense described in this subdivision. This subdivision applies to an offense punishable by imprisonment in the state prison, a material element of which is fraud or breach of a fiduciary obligation, the commission of the crimes of theft or embezzlement upon an elder or dependent adult, or the basis of which is misconduct in office by a public officer, employee, or appointee, including, but not limited to, the following offenses:

(1) Grand theft of any type, forgery, falsification of public records, or acceptance of a bribe by a public official or a public employee.

(2) A violation of Section 72, 118, 118a, 132, or 134.

(3) A violation of Section 25540, of any type, or Section 25541 of the Corporations Code.

(4) A violation of Section 1090 or 27443 of the Government Code.

(5) Felony welfare fraud or Medi-Cal fraud in violation of Section 11483 or 14107 of the Welfare and Institutions Code.

(6) Felony insurance fraud in violation of Section 548 or 550 of this code or former Section 1871.1, or Section 1871.4, of the Insurance Code.

(7) A violation of Section 580, 581, 582, 583, or 584 of the Business and Professions Code.

(8) A violation of Section 22430 of the Business and Professions Code.

(9) A violation of Section 10690 of the Health and Safety Code.

(10) A violation of Section 529a.

(11) A violation of subdivision (c) of Section 368.

(d) If the defendant is out of the state when or after the offense is committed, the prosecution may be commenced as provided in Section 804 within the limitations of time prescribed by this chapter, and no time up to a maximum of three years during which the defendant is not within the state shall be a part of those limitations.

(e) A limitation of time prescribed in this chapter does not commence to run until the offense has been discovered, or could have reasonably been discovered, with regard to offenses under Division 7 (commencing with Section 13000) of the Water Code, under Chapter 6.5 (commencing with Section 25100) of, Chapter 6.7 (commencing with Section 25280) of, or Chapter 6.8 (commencing

with Section 25300) of, Division 20 of, or Part 4 (commencing with Section 41500) of Division 26 of, the Health and Safety Code, or under Section 386.

(f) (1) Notwithstanding any other limitation of time described in this chapter, a criminal complaint may be filed within one year of the date of a report to a responsible adult or agency by a child under 18 years of age that the child is a victim of a crime described in Section 261, 286, 288, 288a, 288.5, 289, or 289.5.

(2) For purposes of this subdivision, a "responsible adult" or "agency" means a person or agency required to report pursuant to Section 11166. This subdivision applies only if both of the following occur:

(A) The limitation period specified in Section 800 or 801 has expired.

(B) The defendant has committed at least one violation of Section 261, 286, 288, 288a, 288.5, 289, or 289.5 against the same victim within the limitation period specified for that crime in either Section 800 or 801.

(3) (A) This subdivision applies to a cause of action arising before, on, or after January 1, 1990, the effective date of this subdivision, and it shall revive any cause of action barred by Section 800 or 801 if any of the following occurred or occurs:

(i) The complaint or indictment was filed on or before January 1, 1997, and it was filed within the time period specified in this subdivision.

(ii) The complaint or indictment is or was filed subsequent to January 1, 1997, and it is or was filed within the time period specified within this subdivision.

(iii) The victim made the report required by this subdivision to a responsible adult or agency after January 1, 1990, and a complaint or indictment was not filed within the time period specified in this subdivision, but a complaint or indictment is filed no later than 180 days after the date on which either a published opinion of the California Supreme Court, deciding whether retroactive application of this section is constitutional, becomes final or the United States Supreme Court files an opinion deciding the question of whether retroactive application of this subdivision is constitutional, whichever occurs first.

(iv) The victim made the report required by this subdivision to a responsible adult or agency after January 1, 1990, and a complaint or indictment was filed within the time period specified in this subdivision, but the indictment, complaint, or subsequently filed information was dismissed, but a new complaint or indictment is or was filed no later than 180 days after the date on which either a published opinion of the California Supreme Court, deciding whether retroactive application of this section is constitutional, becomes final or the United States Supreme Court files an opinion

deciding the question of whether retroactive application of this subdivision is constitutional, whichever occurs first.

(B) (i) If the victim made the report required by this subdivision to a responsible adult or agency after January 1, 1990, and a complaint or indictment was filed within the time period specified in this subdivision, but the indictment, complaint, or subsequently filed information was dismissed, a new complaint or indictment may be filed notwithstanding any other provision of law, including, but not limited to, subdivision (c) of Section 871.5 and subdivision (b) of Section 1238.

(ii) An order dismissing an action filed under this subdivision, which is entered or becomes effective at any time prior to 180 days after the date on which either a published opinion of the California Supreme Court, deciding the question of whether retroactive application of this section is constitutional, becomes final or the United States Supreme Court files an opinion deciding the question of whether retroactive application of this subdivision is constitutional, whichever occurs first, shall not be considered an order terminating an action within the meaning of Section 1387.

(iii) Any ruling regarding the retroactivity of this subdivision or its constitutionality made in the course of the previous proceeding, including any review proceeding, shall not be binding upon refiling.

(g) (1) Notwithstanding any other limitation of time described in this chapter, a criminal complaint may be filed within one year of the date of a report to a California law enforcement agency by a person of any age alleging that he or she, while under the age of 18 years, was the victim of a crime described in Section 261, 286, 288, 288a, 288.5, 289, or 289.5.

(2) This subdivision applies only if both of the following occur:

(A) The limitation period specified in Section 800 or 801 has expired.

(B) The crime involved substantial sexual conduct, as described in subdivision (b) of Section 1203.066, excluding masturbation that is not mutual, and there is independent evidence that clearly and convincingly corroborates the victim's allegation. No evidence may be used to corroborate the victim's allegation that otherwise would be inadmissible during trial. Independent evidence does not include the opinions of mental health professionals.

(3) (A) This subdivision applies to a cause of action arising before, on, or after January 1, 1994, the effective date of this subdivision, and it shall revive any cause of action barred by Section 800 or 801 if any of the following occurred or occurs:

(i) The complaint or indictment was filed on or before January 1, 1997, and it was filed within the time period specified in this subdivision.

(ii) The complaint or indictment is or was filed subsequent to January 1, 1997, and it is or was filed within the time period specified within this subdivision.

(iii) The victim made the report required by this subdivision to a law enforcement agency after January 1, 1994, and a complaint or indictment was not filed within the time period specified in this subdivision, but a complaint or indictment is filed no later than 180 days after the date on which either a published opinion of the California Supreme Court, deciding the question of whether retroactive application of this subdivision is constitutional, becomes final or the United States Supreme Court files an opinion deciding the question of whether retroactive application of this subdivision is constitutional, whichever occurs first.

(iv) The victim made the report required by this subdivision to a law enforcement agency after January 1, 1994, and a complaint or indictment was filed within the time period specified in this subdivision, but the indictment, complaint, or subsequently filed information was dismissed, but a new complaint or indictment is filed no later than 180 days after the date on which either a published opinion of the California Supreme Court, deciding the question of whether retroactive application of this subdivision is constitutional, becomes final or the United States Supreme Court files an opinion deciding the question of whether retroactive application of this subdivision is constitutional, whichever occurs first.

(B) (i) If the victim made the report required by this subdivision to a law enforcement agency after January 1, 1994, and a complaint or indictment was filed within the time period specified in this subdivision, but the indictment, complaint, or subsequently filed information was dismissed, a new complaint or indictment may be filed notwithstanding any other provision of law, including, but not limited to, subdivision (c) of Section 871.5 and subdivision (b) of Section 1238.

(ii) An order dismissing an action filed under this subdivision, which is entered or becomes effective at any time prior to 180 days after the date on which either a published opinion of the California Supreme Court, deciding the question of whether retroactive application of this section is constitutional, becomes final or the United States Supreme Court files an opinion deciding the question of whether retroactive application of this subdivision is constitutional, whichever occurs first, shall not be considered an order terminating an action within the meaning of Section 1387.

(iii) Any ruling regarding the retroactivity of this subdivision or its constitutionality made in the course of the previous proceeding, by any trial court or any intermediate appellate court, shall not be binding upon refiling.

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CHAPTER 945

An act to amend Sections 1505, 1568.03, and 1569.145 of the Health and Safety Code, relating to community care.

[Approved by Governor September 28, 1998. Filed with Secretary of State September 29, 1998.]

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

SECTION 1. Section 1505 of the Health and Safety Code is amended to read:

1505. This chapter does not apply to any of the following:

(a) Any health facility, as defined by Section 1250.

(b) Any clinic, as defined by Section 1202.

(c) Any juvenile placement facility approved by the California Youth Authority or any juvenile hall operated by a county.

(d) Any place in which a juvenile is judicially placed pursuant to subdivision (a) of Section 727 of the Welfare and Institutions Code.

(e) Any child day care facility, as defined in Section 1596.750.

(f) Any facility conducted by and for the adherents of any well-recognized church or religious denomination for the purpose of providing facilities for the care or treatment of the sick who depend upon prayer or spiritual means for healing in the practice of the religion of the church or denomination.

(g) Any school dormitory or similar facility determined by the department.

(h) Any house, institution, hotel, homeless shelter, or other similar place that supplies board and room only, or room only, or board only, provided that no resident thereof requires any element of care as determined by the director.

(i) Recovery houses or other similar facilities providing group living arrangements for persons recovering from alcoholism or drug addiction where the facility provides no care or supervision.

(j) Any alcoholism or drug abuse recovery or treatment facility as defined by Section 11834.11.

(k) Any arrangement for the receiving and care of persons by a relative or any arrangement for the receiving and care of persons from only one family by a close friend of the parent, guardian, or conservator, if the arrangement is not for financial profit and occurs only occasionally and irregularly, as defined by regulations of the state department. For purposes of this chapter, arrangements for the receiving and care of persons by a relative shall include relatives of the child or relatives of the child's half-sibling, for the purpose of keeping sibling groups together.

(*l*) Any supported living arrangement for individuals with developmental disabilities as defined in Section 4689 of the Welfare and Institutions Code.

(m) (1) Any family home agency or family home, as defined in Section 4689.1 of the Welfare and Institutions Code, that is vendored by the State Department of Developmental Services and that does either of the following:

(A) As a family home approved by a family home agency, provides 24-hour care for one or two adults with developmental disabilities in the residence of the family home provider or providers and the family home provider or providers' family, and the provider is not licensed by the State Department of Social Services or the State Department of Health Services or certified by a licensee of the State Department of Social Services or the State Department of Health Services.

(B) As a family home agency, engages in recruiting, approving, and providing support to family homes.

(2) No part of this subdivision shall be construed as establishing by implication either a family home agency or family home licensing category.

(n) Any facility in which only Indian children who are eligible under the federal Indian Child Welfare Act, Chapter 21 (commencing with Section 1901) of Title 25 of the United States Code are placed and that is one of the following:

(1) An extended family member of the Indian child, as defined in Section 1903 of Title 25 of the United States Code.

(2) A foster home that is licensed, approved, or specified by the Indian child's tribe pursuant to Section 1915 of Title 25 of the United States Code.

(o) Any housing for elderly or disabled persons, or both, that is approved and operated pursuant to Section 202 of Public Law 86-372 (12 U.S.C.A. Sec. 1701q), or Section 811 of Public Law 101-625 (42 U.S.C.A. Sec. 8013), or whose mortgage is insured pursuant to Section 236 of Public Law 90-448 (12 U.S.C.A. Sec. 1715z), or that receives mortgage assistance pursuant to Section 221d (3) of Public Law 87-70 (12 U.S.C.A. Sec. 17151), where supportive services are made available to residents at their option, as long as the project owner or operator does not contract for or provide the supportive services. The project owner or operator may coordinate, or help residents gain access to, the supportive services, either directly, or through a service coordinator.

(p) Any similar facility determined by the director.

SEC. 2. Section 1568.03 of the Health and Safety Code is amended to read:

1568.03. (a) No person, firm, partnership, association, or corporation within the state and no state or local public agency shall operate, establish, manage, conduct, or maintain a residential care facility in this state without first obtaining and maintaining a valid license therefor, as provided in this chapter.

(b) A facility may accept or retain residents requiring varying levels of care. However, a facility shall not accept or retain residents

who require a higher level of care than the facility is authorized to provide. Persons who require 24-hour skilled nursing intervention shall not be appropriate for a residential care facility.

(c) This chapter shall not apply to the following:

(1) Any health facility, as defined in Section 1250.

(2) Any clinic, as defined in Section 1200.

(3) Any arrangement for the receiving and care of persons with chronic, life-threatening illness by a relative, guardian or conservator, significant other, or close friend; or any arrangement for the receiving and care of persons with chronic, life-threatening illness from only one family as respite for the relative, guardian or conservator, significant other, or close friend, if the arrangement is not for financial profit and occurs only occasionally and irregularly, as defined by regulations of the department.

(4) (A) Any house, institution, hotel, foster home, shared housing project, or other similar facility that is limited to providing any of the following: housing, meals, transportation, housekeeping, recreational and social activities, the enforcement of house rules, counseling on activities of daily living, and service referrals, as long as both of the following conditions are met:

(i) After any referral, all residents thereof independently obtain care and supervision and medical services without the assistance of the facility or of any person or entity with an organizational or financial connection with that facility.

(ii) No resident thereof has an unmet need for care and supervision or protective supervision. A memorandum of understanding between the facility and any service agency to which it refers residents does not necessarily itself constitute an agreement for care and supervision of the resident.

(B) In determining the applicability of this paragraph, the department shall determine the residents' need for care and supervision, if any, and shall identify the persons or entities providing or assisting in the provision of care and supervision. This paragraph shall apply only if the department determines that the care and supervision needs of all residents are being independently met.

(5) Any housing for elderly or disabled persons, or both, that is approved and operated pursuant to Section 202 of Public Law 86-372 (12 U.S.C.A. Sec. 1701q), or Section 811 of Public Law 101-625 (42 U.S.C.A. Sec. 8013), or whose mortgage is insured pursuant to Section 236 of Public Law 90-448 (12 U.S.C.A. Sec. 1715z), or that receives mortgage assistance pursuant to Section 221d (3) of Public Law 87-70 (12 U.S.C.A. Sec. 17151), where supportive services are made available to residents at their option, as long as the project owner or operator does not contract for or provide the supportive services. The project owner or operator may coordinate, or help residents gain access to, the supportive services, either directly, or through a service coordinator.

(6) Any similar facility determined by the director.

(d) A holder of a residential care facility license may hold or obtain an additional license or a child day care facility license, as long as the services required by each license are provided at separate locations or distinctly separate sections of the building.

(e) The director may bring an action to enjoin the violation or threatened violation of this section in the superior court in and for the county in which the violation occurred or is about to occur. Any proceeding under this section shall conform to the requirements of Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, except that the director shall not be required to allege facts necessary to show or tending to show lack of adequate remedy at law or irreparable damage or loss. The court shall, if it finds the allegations to be true, issue its order enjoining continuance of the violation.

SEC. 3. Section 1569.145 of the Health and Safety Code is amended to read:

1569.145. This chapter shall not apply to any of the following:

(a) Any health facility, as defined by Section 1250.

(b) Any clinic, as defined by Section 1202.

(c) Any facility conducted by and for the adherents of any well-recognized church or religious denomination for the purpose of providing facilities for the care or treatment of the sick who depend upon prayer or spiritual means for healing in the practice of the religion of such church or denomination.

(d) Any house, institution, hotel, congregate housing project for the elderly, or other similar place that is limited to providing one or more of the following: housing, meals, transportation, housekeeping, or recreational and social activities; or that have residents independently accessing supportive services; provided, however, that no resident thereof requires any element of care and supervision or protective supervision as determined by the director. This subdivision shall not include a home or residence that is described in subdivision (f).

(e) Recovery houses or other similar facilities providing group living arrangements for persons recovering from alcoholism or drug addiction where the facility provides no care or supervision.

(f) (1) Any arrangement for the care and supervision of a person or persons by a family member.

(2) Any arrangement for the care and supervision of a person or persons from only one family by a close friend, whose friendship preexisted the contact between the provider and the recipient, and both of the following are met:

(A) The care and supervision is provided in a home or residence chosen by the recipient.

(B) The arrangement is not of a business nature and occurs only as long as the needs of the recipient for care and supervision are adequately met.

(g) Any housing for elderly or disabled persons, or both, that is approved and operated pursuant to Section 202 of Public Law 86-372 (12 U.S.C.A. Sec. 1701q), or Section 811 of Public Law 101-625 (42 U.S.C.A. Sec. 8013), or whose mortgage is insured pursuant to Section 236 of Public Law 90-448 (12 U.S.C.A. Sec. 1715z), or that receives mortgage assistance pursuant to Section 221d (3) of Public Law 87-70 (12 U.S.C.A. Sec. 17151), where supportive services are made available to residents at their option, as long as the project owner or operator does not contract for or provide the supportive services. The project owner or operator may coordinate, or help residents gain access to, the supportive services, either directly, or through a service coordinator.

(h) Any similar facility determined by the director.

(i) For purposes of this section, "family member" means any spouse, by marriage or otherwise, child or stepchild, by natural birth or by adoption, parent, brother, sister, half-brother, half-sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, first cousin, or any person denoted by the prefix "grand" or "great," or the spouse of any of these persons.

(j) A person shall not be exempted from this chapter's licensure requirements if he or she has been appointed as conservator of the person, estate of the person, or both, if the person is receiving care and supervision from the conservator as regulated by this chapter, unless the conservator is otherwise exempted under other provisions of this section.

CHAPTER 946

An act to amend Sections 15610.07, 15610.10, 15610.17, 15610.30, 15610.55, 15610.57, 15630, 15633, 15640, 15650, 15658, and 15659 of, to add Section 15653.5 to, and to add Chapter 13.5 (commencing with Section 15760) to Part 3 of Division 9 of, the Welfare and Institutions Code, relating to adult abuse.

[Approved by Governor September 28, 1998. Filed with Secretary of State September 29, 1998.]

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

SECTION 1. The Legislature finds and declares all of the following:

(a) California's mandatory reporting laws, first enacted in 1982, have brought the tragedy of elder and dependent adult abuse to public attention. Annually, 225,000 incidents of adult abuse occur in California--an increase of over 1000 percent over the number of incidents in 1986–87. Twenty-three percent of the incidents involve physical abuse, 32 percent involve fiduciary abuse, 22 percent involve mental suffering, and 3.8 percent involve sexual abuse. In addition to the victimization by another person, in more than 50 percent of the incidents the elder or dependent adult is unable to meet their own needs due to frailty, untreated health conditions, mental or emotional problems, or family dysfunctions.

(b) California counties lack the ability to respond to approximately 80 percent of the incidents. In 1996–97 the Adult Protective Services Program statewide was able to respond to fewer than 44,000 of the 225,000 incidents.

(c) Staff assigned to Adult Protective Services programs statewide has decreased by 35 percent since 1990 in California.

(d) Forty-five percent of the California counties no longer provide case management services in Adult Protective Services. Fifty percent of the counties do not provide counseling. Fifty percent do not provide a 24-hour hotline, money management, or tangible services critical to ongoing safety and protection of the elders and dependent adults.

(e) Fewer than 20 percent of the counties respond to all Adult Protective Service reports. Counties must triage calls and are unable to respond to many serious types of abuse.

(f) To remedy situations of immediate danger to vulnerable elders and dependent adults, it is urgent that California establishes and funds a comprehensive adult protective services program statewide to maintain the safety of elders and dependent adults in the home and in the community.

SEC. 2. Section 15610.07 of the Welfare and Institutions Code is amended to read:

15610.07. "Abuse of an elder or a dependent adult" means either of the following:

(a) Physical abuse, neglect, financial abuse, abandonment, isolation, abduction, or other treatment with resulting physical harm or pain or mental suffering.

(b) The deprivation by a care custodian of goods or services that are necessary to avoid physical harm or mental suffering.

SEC. 3. Section 15610.10 of the Welfare and Institutions Code is amended to read:

15610.10. "Adult protective services" means those preventive and remedial activities performed on behalf of elders and dependent adults who are unable to protect their own interests, harmed or threatened with harm, caused physical or mental injury due to the action or inaction of another person or their own action as a result of ignorance, illiteracy, incompetence, mental limitation, substance abuse, or poor health, lacking in adequate food, shelter, or clothing, exploited of their income and resources, or deprived of entitlement due them.

SEC. 4. Section 15610.17 of the Welfare and Institutions Code is amended to read:

15610.17. "Care custodian" means an administrator or an employee of any of the following public or private facilities or agencies, or persons providing care or services for elders or dependent adults, including members of the support staff and maintenance staff:

(a) Twenty-four-hour health facilities, as defined in Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code.

(b) Clinics.

(c) Home health agencies.

(d) Agencies providing publicly funded in-home supportive services, nutrition services, or other home and community-based support services.

(e) Adult day health care centers and adult day care.

(f) Secondary schools that serve 18- to 22-year-old dependent adults and postsecondary educational institutions that serve dependent adults or elders.

(g) Independent living centers.

(h) Camps.

(i) Alzheimer's Disease day care resource centers.

(j) Community care facilities, as defined in Section 1502 of the Health and Safety Code, and residential care facilities for the elderly, as defined in Section 1569.2 of the Health and Safety Code.

(k) Respite care facilities.

(*l*) Foster homes.

(m) Vocational rehabilitation facilities and work activity centers.

(n) Designated area agencies on aging.

(o) Regional centers for persons with developmental disabilities.

(p) State Department of Social Services and State Department of Health Services licensing divisions.

(q) County welfare departments.

(r) Offices of patients' rights advocates and clients' rights advocates, including attorneys.

(s) The office of the long-term care ombudsman.

(t) Offices of public conservators, public guardians, and court investigators.

(u) Any protection or advocacy agency or entity that is designated by the Governor to fulfill the requirements and assurances of the following:

(1) The federal Developmental Disability Assistance and Bill of Rights Act, as amended, contained in Chapter 75 (commencing with Section 6000) of Title 42 of the United States Code, for protection and advocacy of the rights of persons with developmental disabilities.

(2) The Protection and Advocacy for the Mentally Ill Individuals Act of 1986, as amended, contained in Chapter 114 (commencing with Section 10801) of Title 42 of the United States Code, for the protection and advocacy of the rights of persons with mental illnesses.

(v) Any other protective, public, sectarian, mental health, or private assistance or advocacy agency or person providing health services or social services to elders or dependent adults.

SEC. 5. Section 15610.30 of the Welfare and Institutions Code is amended to read:

15610.30. (a) "Financial abuse" means a situation in which one or both of the following apply:

(1) A person, including, but not limited to, one who has the care or custody of, or who stands in a position of trust to, an elder or a dependent adult, takes, secretes, or appropriates their money or property, to any wrongful use, or with the intent to defraud.

(2) A situation in which all of the following conditions are satisfied:

(A) An elder (who would be a dependent adult if he or she were between the ages of 18 and 64) or dependent adult or his or her representative requests that a third party transfer to the elder or dependent adult or to his or her representative, or to a court appointed receiver, property that meets all of the following criteria:

(i) The third party holds or has control of the property.

(ii) The property belongs to, or is held in express trust, constructive trust or resulting trust for, the elder or dependent adult.

(iii) The ownership or control of the property was acquired in whole or in part by the third party or someone acting in concert with the third party from the elder or dependent adult at a time when the elder or dependent adult was a dependent adult or was a person who would have been a dependent adult if he or she had then been between the ages of 18 and 64.

(B) Despite the request for the transfer of property, the third party without good cause either continues to hold the property or

fails to take reasonable steps to make the property readily available to the elder or dependent adult, to his or her representative or to a court appointed receiver.

(C) The third party committed acts described in this paragraph in bad faith. A third party shall be deemed to have acted in bad faith if the third party either knew or should have known that the elder or dependent adult had the right to have the property transferred or made readily available. For purposes of this subdivision, a third party should have known of this right if, on the basis of the information received by the elder or dependent adult, or the elder or dependent adult's representative, it is obvious to a reasonable person that the elder or dependent adult had this right.

(b) For the purpose of this section, the term "third party" means a person who holds or has control of property that belongs to or is held in express trust, constructive trust or resulting trust for an elder or dependent adult.

(c) For the purposes of this section, the term "representative" means an elder or dependent adult's conservator of the estate, or attorney-in-fact acting within the authority of the power of attorney.

SEC. 6. Section 15610.55 of the Welfare and Institutions Code is amended to read:

15610.55. (a) "Multidisciplinary personnel team" means any team of two or more persons who are trained in the prevention, identification, and treatment of abuse of elderly or dependent persons and who are qualified to provide a broad range of services related to abuse of elderly or dependent persons, as defined in Section 15753.5.

(b) A multidisciplinary personnel team may include, but is not limited to, all of the following:

(1) Psychiatrists, psychologists, or other trained counseling personnel.

(2) Police officers or other law enforcement agents.

(3) Medical personnel with sufficient training to provide health services.

(4) Social workers with experience or training in prevention of abuse of elderly or dependent persons.

(5) Public guardians.

SEC. 7. Section 15610.57 of the Welfare and Institutions Code is amended to read:

15610.57. (a) "Neglect" means either of the following:

(1) The negligent failure of any person having the care or custody of an elder or a dependent adult to exercise that degree of care that a reasonable person in a like position would exercise.

(2) The negligent failure of the person themselves to exercise that degree of care that a reasonable person in a like position would exercise.

(b) Neglect includes, but is not limited to, all of the following:

(1) Failure to assist in personal hygiene, or in the provision of food, clothing, or shelter.

(2) Failure to provide medical care for physical and mental health needs. No person shall be deemed neglected or abused for the sole reason that he or she voluntarily relies on treatment by spiritual means through prayer alone in lieu of medical treatment.

(3) Failure to protect from health and safety hazards.

(4) Failure to prevent malnutrition or dehydration.

(5) Failure of a person to provide the needs specified in paragraphs (1) to (4), inclusive, for themselves due to ignorance, illiteracy, incompetence, mental limitation, substance abuse, or poor health.

SEC. 8. Section 15630 of the Welfare and Institutions Code is amended to read:

15630. (a) Any person who has assumed full or intermittent responsibility for care or custody of an elder or dependent adult, whether or not that person receives compensation, including administrators, supervisors, and any licensed staff of a public or private facility that provides care or services for elder or dependent adults, or any elder or dependent adult care custodian, health practitioner, or employee of a county adult protective services agency or a local law enforcement agency is a mandated reporter.

(b) (1) Any mandated reporter, who, in his or her professional capacity, or within the scope of his or her employment, has observed or has knowledge of an incident that reasonably appears to be physical abuse, abandonment, isolation, financial abuse, or neglect, or is told by an elder or dependent adult that he or she has experienced behavior constituting physical abuse, abandonment, isolation, financial abuse, or neglect, or reasonably suspects abuse shall report the known or suspected instance of abuse by telephone immediately or as soon as practically possible, and by written report sent within two working days, as follows:

(A) If the abuse has occurred in a long-term care facility, except a state mental health hospital or a state developmental center, the report shall be made to the local ombudsman or the local law enforcement agency.

Except in an emergency, the local ombudsman and the local law enforcement agency shall report any case of known or suspected abuse to the State Department of Health Services and any case of known or suspected criminal activity to the Bureau of Medi-Cal Fraud, as soon as is practical.

(B) If the suspected or alleged abuse occurred in a state mental health hospital or a state developmental center, the report shall be made to designated investigators of the State Department of Mental Health or the State Department of Developmental Services or to the local law enforcement agency.

Except in an emergency, the local law enforcement agency shall report any case of known or suspected criminal activity to the Bureau of Medi-Cal Fraud, as soon as is practical.

(C) If the abuse has occurred any place other than one described in subparagraph (A), the report shall be made to the adult protective services agency or the local law enforcement agency.

(2) (A) A mandated reporter shall not be required to report, as a suspected incident of abuse, as defined in Section 15610.07, an incident where all of the following conditions exist:

(i) The mandated reporter has been told by an elder or dependent adult that he or she has experienced behavior constituting physical abuse, abandonment, isolation, financial abuse, or neglect.

(ii) The mandated reporter is not aware of any independent evidence that corroborates the statement that the abuse has occurred.

(iii) The elder or dependent adult has been diagnosed with a mental illness, defect, dementia, or incapacity, or is the subject of a court-ordered conservatorship because of a mental illness, defect, dementia, or incapacity.

(iv) The mandated reporter reasonably believes that the abuse did not occur.

(B) This paragraph shall not be construed to impose upon mandated reporters a duty to investigate a known or suspected incident of abuse and shall not be construed to lessen or restrict any existing duty of mandated reporters.

(3) (A) In a long-term care facility, a mandated reporter shall not be required to report as a suspected incident of abuse, as defined in Section 15610.07, an incident where all of the following conditions exist:

(i) The mandated reporter is aware that there is a proper plan of care.

(ii) The mandated reporter is aware that the plan of care was properly provided or executed.

(iii) A physical, mental, or medical injury occurred as a result of care provided pursuant to clause (i) or (ii).

(iv) The mandated reporter reasonably believes that the injury was not the result of abuse.

(B) This paragraph shall not be construed to require a mandated reporter to seek, nor to preclude a mandated reporter from seeking, information regarding a known or suspected incident of abuse prior to reporting. This paragraph shall apply only to those categories of mandated reporters that the State Department of Health Services determines, upon approval by the Bureau of Medi-Cal Fraud and the State Long-Term Care Ombudsman, have access to plans of care and have the training and experience necessary to determine whether the conditions specified in this section have been met.

(c) (1) Any mandated reporter who has knowledge of, or reasonably suspects that, types of elder or dependent adult abuse for

which reports are not mandated have been inflicted upon an elder or dependent adult or that his or her emotional well-being is endangered in any other way, may report the known or suspected instance of abuse.

(2) If the suspected or alleged abuse occurred in a long-term care facility other than a state mental health hospital or a state developmental center, the report may be made to the long-term care ombudsman program. Except in an emergency, the local ombudsman shall report any case of known or suspected abuse to the State Department of Health Services and any case of known or suspected criminal activity to the Bureau of Medi-Cal Fraud, as soon as is practical.

(3) If the suspected or alleged abuse occurred in a state mental health hospital or a state developmental center, the report may be made to the designated investigator of the State Department of Mental Health or the State Department of Developmental Services, or to a local law enforcement agency or to the local ombudsman. Except in an emergency, the local ombudsman and the local law enforcement agency shall report any case of known or suspected criminal activity to the Bureau of Medi-Cal Fraud, as soon as is practical.

(4) If the suspected or alleged abuse occurred in a place other than a place described in paragraph (2) or (3), the report may be made to the county adult protective services agency.

(5) If the conduct involves criminal activity not covered in subdivision (b), it may be immediately reported to the appropriate law enforcement agency.

(d) When two or more mandated reporters are present and jointly have knowledge or reasonably suspect that types of abuse of an elder or a dependent adult for which a report is or is not mandated have occurred, and when there is agreement among them, the telephone report may be made by a member of the team selected by mutual agreement, and a single report may be made and signed by the selected member of the reporting team. Any member who has knowledge that the member designated to report has failed to do so shall thereafter make the report.

(e) A telephone report of a known or suspected instance of elder or dependent adult abuse shall include the name of the person making the report, the name and age of the elder or dependent adult, the present location of the elder or dependent adult, the names and addresses of family members or any other person responsible for the elder or dependent adult's care, if known, the nature and extent of the elder or dependent adult's condition, the date of the incident, and any other information, including information that led that person to suspect elder or dependent adult abuse, requested by the agency receiving the report.

(f) The reporting duties under this section are individual, and no supervisor or administrator shall impede or inhibit the reporting

duties, and no person making the report shall be subject to any sanction for making the report. However, internal procedures to facilitate reporting, ensure confidentiality, and apprise supervisors and administrators of reports may be established, provided they are not inconsistent with this chapter.

(g) (1) Whenever this section requires a county adult protective services agency to report to a law enforcement agency, the law enforcement agency shall, immediately upon request, provide a copy of its investigative report concerning the reported matter to that county adult protective services agency.

(2) Whenever this section requires a law enforcement agency to report to a county adult protective services agency, the county adult protective services agency shall, immediately upon request, provide a copy of its investigative report concerning the reported matter to that law enforcement agency.

(3) The requirement to disclose investigative reports pursuant to this subdivision shall not include the disclosure of social services records or case files that are confidential, nor shall this subdivision be construed to allow disclosure of any reports or records if the disclosure would be prohibited by any other provision of state or federal law.

(h) Failure to report physical abuse, abandonment, isolation, financial abuse, or neglect of an elder or dependent adult, in violation of this section, is a misdemeanor, punishable by not more that six months in the county jail or by a fine of not more than one thousand dollars ($1,000), or by both that fine and imprisonment.

SEC. 8.5. Section 15630 of the Welfare and Institutions Code is amended to read:

15630. (a) Any person who has assumed full or intermittent responsibility for care or custody of an elder or dependent adult, whether or not that person receives compensation, including administrators, supervisors, and any licensed staff of a public or private facility that provides care or services for elder or dependent adults, or any elder or dependent adult care custodian, health practitioner, or employee of a county adult protective services agency or a local law enforcement agency is a mandated reporter.

(b) (1) Any mandated reporter, who, in his or her professional capacity, or within the scope of his or her employment, has observed or has knowledge of an incident that reasonably appears to be physical abuse, abandonment, isolation, financial abuse, or neglect, or is told by an elder or dependent adult that he or she has experienced behavior constituting physical abuse, abandonment, isolation, financial abuse, or neglect, or reasonably suspects abuse shall report the known or suspected instance of abuse by telephone immediately or as soon as practically possible, and by written report sent within two working days, as follows:

(A) If the abuse has occurred in a long-term care facility, except a state mental health hospital or a state developmental center, the

report shall be made to the local ombudsman or the local law enforcement agency.

Except in an emergency, the local ombudsman and the local law enforcement agency shall report any case of known or suspected abuse to the State Department of Health Services and any case of known or suspected criminal activity to the Bureau of Medi-Cal Fraud, as soon as is practical.

(B) If the suspected or alleged abuse occurred in a state mental health hospital or a state developmental center, the report shall be made to designated investigators of the State Department of Mental Health or the State Department of Developmental Services or to the local law enforcement agency.

Except in an emergency, the local law enforcement agency shall report any case of known or suspected criminal activity to the Bureau of Medi-Cal Fraud, as soon as is practical.

(C) If the abuse has occurred any place other than one described in subparagraph (A), the report shall be made to the adult protective services agency or the local law enforcement agency.

(2) (A) A mandated reporter shall not be required to report, as a suspected incident of abuse, as defined in Section 15610.07, an incident where all of the following conditions exist:

(i) The mandated reporter has been told by an elder or dependent adult that he or she has experienced behavior constituting physical abuse, abandonment, isolation, financial abuse, or neglect.

(ii) The mandated reporter is not aware of any independent evidence that corroborates the statement that the abuse has occurred.

(iii) The elder or dependent adult has been diagnosed with a mental illness, defect, dementia, or incapacity, or is the subject of a court-ordered conservatorship because of a mental illness, defect, dementia, or incapacity.

(iv) The mandated reporter reasonably believes that the abuse did not occur.

(B) This paragraph shall not be construed to impose upon mandated reporters a duty to investigate a known or suspected incident of abuse and shall not be construed to lessen or restrict any existing duty of mandated reporters.

(3) (A) In a long-term care facility, a mandated reporter shall not be required to report as a suspected incident of abuse, as defined in Section 15610.07, an incident where all of the following conditions exist:

(i) The mandated reporter is aware that there is a proper plan of care.

(ii) The mandated reporter is aware that the plan of care was properly provided or executed.

(iii) A physical, mental, or medical injury occurred as a result of care provided pursuant to clause (i) or (ii).

(iv) The mandated reporter reasonably believes that the injury was not the result of abuse.

(B) This paragraph shall not be construed to require a mandated reporter to seek, nor to preclude a mandated reporter from seeking, information regarding a known or suspected incident of abuse prior to reporting. This paragraph shall apply only to those categories of mandated reporters that the State Department of Health Services determines, upon approval by the Bureau of Medi-Cal Fraud and the State Long-Term Care Ombudsman, have access to plans of care and have the training and experience necessary to determine whether the conditions specified in this section have been met.

(c) (1) Any mandated reporter who has knowledge of, or reasonably suspects that, types of elder or dependent adult abuse for which reports are not mandated have been inflicted upon an elder or dependent adult or that his or her emotional well-being is endangered in any other way, may report the known or suspected instance of abuse.

(2) If the suspected or alleged abuse occurred in a long-term care facility other than a state mental health hospital or a state developmental center, the report may be made to the long-term care ombudsman program. Except in an emergency, the local ombudsman shall report any case of known or suspected abuse to the State Department of Health Services and any case of known or suspected criminal activity to the Bureau of Medi-Cal Fraud, as soon as is practical.

(3) If the suspected or alleged abuse occurred in a state mental health hospital or a state developmental center, the report may be made to the designated investigator of the State Department of Mental Health or the State Department of Developmental Services, or to a local law enforcement agency or to the local ombudsman. Except in an emergency, the local ombudsman and the local law enforcement agency shall report any case of known or suspected criminal activity to the Bureau of Medi-Cal Fraud, as soon as is practical.

(4) If the suspected or alleged abuse occurred in a place other than a place described in paragraph (2) or (3), the report may be made to the county adult protective services agency.

(5) If the conduct involves criminal activity not covered in subdivision (b), it may be immediately reported to the appropriate law enforcement agency.

(d) When two or more mandated reporters are present and jointly have knowledge or reasonably suspect that types of abuse of an elder or a dependent adult for which a report is or is not mandated have occurred, and when there is agreement among them, the telephone report may be made by a member of the team selected by mutual agreement, and a single report may be made and signed by the selected member of the reporting team. Any member who has

knowledge that the member designated to report has failed to do so shall thereafter make the report.

(e) A telephone report of a known or suspected instance of elder or dependent adult abuse shall include the name of the person making the report, the name and age of the elder or dependent adult, the present location of the elder or dependent adult, the names and addresses of family members or any other person responsible for the elder or dependent adult's care, if known, the nature and extent of the elder or dependent adult's condition, the date of the incident, and any other information, including information that led that person to suspect elder or dependent adult abuse, requested by the agency receiving the report.

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

(g) (1) Whenever this section requires a county adult protective services agency to report to a law enforcement agency, the law enforcement agency shall, immediately upon request, provide a copy of its investigative report concerning the reported matter to that county adult protective services agency.

(2) Whenever this section requires a law enforcement agency to report to a county adult protective services agency, the county adult protective services agency shall, immediately upon request, provide a copy of its investigative report concerning the reported matter to that law enforcement agency.

(3) The requirement to disclose investigative reports pursuant to this subdivision shall not include the disclosure of social services records or case files that are confidential, nor shall this subdivision be construed to allow disclosure of any reports or records if the disclosure would be prohibited by any other provision of state or federal law.

(h) Failure to report physical abuse, abandonment, isolation, financial abuse, or neglect of an elder or dependent adult, in violation of this section, is a misdemeanor, punishable by not more that six months in the county jail or by a fine of not more than one thousand dollars ($1,000), or by both that fine and imprisonment. Any mandated reporter who willfully fails to report physical abuse, abandonment, isolation, financial abuse, or neglect of an elder or dependent adult, in violation of this section, where that abuse results in death or great bodily injury, is punishable by not more than one year in a county jail or by a fine of not more than five thousand dollars ($5,000) or by both that fine and imprisonment.

SEC. 9. Section 15633 of the Welfare and Institutions Code is amended to read:

15633. (a) The reports made pursuant to Sections 15630 and 15631 shall be confidential and may be disclosed only as provided in subdivision (b). Any violation of the confidentiality required by this chapter is a misdemeanor punishable by not more than six months in the county jail, by a fine of five hundred dollars ($500), or by both that fine and imprisonment.

(b) Reports of suspected elder or dependent adult abuse and information contained therein may be disclosed only to the following:

(1) Persons or agencies to whom disclosure of information or the identity of the reporting party is permitted under Section 15633.5.

(2) (A) Persons who are trained and qualified to serve on multidisciplinary personnel teams may disclose to one another information and records that are relevant to the prevention, identification, or treatment of abuse of elderly or dependent persons.

(B) Except as provided in subparagraph (A), any personnel of the multidisciplinary team or agency that receives information pursuant to this chapter, shall be under the same obligations and subject to the same confidentiality penalties as the person disclosing or providing that information. The information obtained shall be maintained in a manner that ensures the maximum protection of privacy and confidentiality rights.

(c) This section shall not be construed to allow disclosure of any reports or records relevant to the reports of elder or dependent adult 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 the abuse.

SEC. 9.5. Section 15640 of the Welfare and Institutions Code is amended to read:

15640. (a) (1) An adult protective services agency shall immediately, or as soon as practically possible, report by telephone to the law enforcement agency having jurisdiction over the case any known or suspected instance of criminal activity, and to any public agency given responsibility for investigation in that jurisdiction of cases of elder and dependent adult abuse, every known or suspected instance of abuse pursuant to Section 15630 of an elder or dependent adult. A county adult protective services agency shall also send a written report thereof within two working days of receiving the information concerning the incident to each agency to which it is required to make a telephone report under this subdivision. Prior to making any cross-report of allegations of financial abuse to law enforcement agencies, an adult protective services agency shall first determine whether there is reasonable suspicion of any criminal activity.

(2) If an adult protective services agency receives a report of abuse alleged to have occurred in a long-term care facility, that adult protective services agency shall immediately inform the person making the report that he or she is required to make the report to the long-term care ombudsman program or to a local law enforcement

agency. The adult protective services agency shall not accept the report by telephone but shall forward any written report received to the long-term care ombudsman.

(b) If an adult protective services agency or local law enforcement agency or ombudsman program receiving a report of known or suspected elder or dependent adult abuse determines, pursuant to its investigation, that the abuse is being committed by a health practitioner licensed under Division 2 (commencing with Section 500) of the Business and Professions Code, or any related initiative act, or by a person purporting to be a licensee, the adult protective services agency or local law enforcement agency or ombudsman program shall immediately, or as soon as practically possible, report this information to the appropriate licensing agency. The licensing agency shall investigate the report in light of the potential for physical harm. The transmittal of information to the appropriate licensing agency shall not relieve the adult protective services agency or local law enforcement agency or ombudsman program of the responsibility to continue its own investigation as required under applicable provisions of law. The information reported pursuant to this paragraph shall remain confidential and shall not be disclosed.

(c) A local law enforcement agency shall immediately, or as soon as practically possible, report by telephone to the long-term care ombudsman program when the abuse is alleged to have occurred in a long-term care facility or to the county adult protective services agency when it is alleged to have occurred anywhere else, and to the agency given responsibility for the investigation of cases of elder and dependent adult abuse every known or suspected instance of abuse of an elder or dependent adult. A local law enforcement agency shall also send a written report thereof within two working days of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision.

(d) A long-term care ombudsman coordinator may report the instance of abuse to the county adult protective services agency or to the local law enforcement agency for assistance in the investigation of the abuse if the victim gives his or her consent. A long-term care ombudsman program and the Licensing and Certification Division of the State Department of Health Services shall immediately report by telephone and in writing within two working days to the bureau any instance of neglect occurring in a health care facility, that has seriously harmed any patient or reasonably appears to present a serious threat to the health or physical well-being of a patient in that facility. If a victim or potential victim of the neglect withholds consent to being identified in that report, the report shall contain circumstantial information about the neglect but shall not identify that victim or potential victim and the

bureau and the reporting agency shall maintain the confidentiality of the report until the report becomes a matter of public record.

(e) When a county adult protective services agency, a long-term care ombudsman program, or a local law enforcement agency receives a report of abuse, neglect, or abandonment of an elder or dependent adult alleged to have occurred in a long-term care facility, that county adult protective services agency, long-term care ombudsman coordinator, or local law enforcement agency shall report the incident to the licensing agency by telephone as soon as possible.

(f) County adult protective services agencies, long-term care ombudsman programs, and local law enforcement agencies shall report the results of their investigations of referrals or reports of abuse to the respective referring or reporting agencies.

SEC. 10. Section 15650 of the Welfare and Institutions Code is amended to read:

15650. (a) Investigation of reports of known or suspected instances of abuse in long-term care facilities shall be the responsibility of the long-term care ombudsman program, for instances of physical and financial abuse, the local law enforcement agency, and for instances of potential criminal neglect in a long-term health care facility, the long-term care ombudsman program and the bureau.

(b) Investigations of known or suspected instances of abuse outside of long-term care facilities shall be the responsibility of the county adult protective services agency and the local law enforcement agency unless another public agency is given responsibility for investigation in that jurisdiction.

(c) The investigative responsibilities set forth in this section are in addition to, and not in derogation of or substitution for, the investigative and regulatory responsibilities of licensing agencies, such as the State Department of Social Services Community Care Licensing Division and the State Department of Health Services Licensing and Certification Division and their authorized representatives.

(d) Other public agencies involved in the investigation of abuse or advocacy of respective client populations, or both, include, but shall not be limited to, the State Department of Mental Health and the State Department of Developmental Services. Other public agencies shall conduct or assist in, or both, the investigation of reports of abuse of elder and dependent adults within their jurisdiction in conjunction with county adult protective services, local ombudsman programs and local law enforcement agencies.

(e) Each county adult protective services agency shall maintain an inventory of all public and private service agencies available to assist victims of abuse, as defined by Section 15610.07. This inventory shall be used to refer victims in the event that the county adult protective services agency cannot resolve the immediate needs of

the victim, and to serve the victim on a long-term, followup basis. The intent of this section is to acknowledge that limited funds are available to resolve all suspected cases of abuse reported to a county adult protective services agency.

(f) Each local ombudsman program shall maintain an inventory of all public and private agencies available to assist long-term care residents who are victims of abuse, as defined by Section 15610.07. This inventory shall be used to refer cases of abuse in the event that another agency has jurisdiction over the resident, the abuse is verified and further investigation is needed by a law enforcement or licensing agency, or the program does not have sufficient resources to provide immediate assistance. The intent of this section is to acknowledge that ombudsman responsibility in abuse cases is to receive reports, determine the validity of reports, refer verified abuse cases to appropriate agencies for further action as necessary, and follow up to complete the required report information. Other ombudsman services shall be provided to the resident, as appropriate.

SEC. 11. Section 15653.5 is added to the Welfare and Institutions Code, to read:

15653.5. Training for determining when to refer a report of a known or suspected instance of abuse that occurred in a long-term care facility for potential criminal action shall be included in the training provided by the Bureau of Medi-Cal Fraud pursuant to subdivision (h) of Section 12528 of the Government Code.

SEC. 11.5. Section 15658 of the Welfare and Institutions Code is amended to read:

15658. (a) (1) The written abuse reports required for the reporting of abuse, as defined in this chapter, shall be submitted on forms adopted by the State Department of Social Services after consultation with representatives of the various law enforcement agencies, the California Department of Aging, the State Department of Developmental Services, the State Department of Mental Health, the bureau, professional medical and nursing agencies, hospital associations and county welfare departments. These reporting forms shall be distributed by the county adult protective services agencies and the long-term care ombudsman programs. This reporting form may also be used for documenting the telephone report of a known or suspected instance of abuse of an elder or dependent adult by the county adult protective services agency, local ombudsman program, and local law enforcement agencies.

(2) The forms required by this section shall contain the following items:

(A) The name, address, telephone number, and occupation of the person reporting.

(B) The name and address of the victim.

(C) The date, time, and place of the incident.

(D) Other details, including the reporter's observations and beliefs concerning the incident.

(E) Any statement relating to the incident made by the victim.

(F) The name of any individuals believed to have knowledge of the incident.

(G) The name of the individuals believed to be responsible for the incident and their connection to the victim.

(b) (1) Each county adult protective services agency shall report to the State Department of Social Services monthly on the reports received pursuant to this chapter. The reports shall be made on forms adopted by the department. The information reported shall include, but shall not be limited to, the number of incidents of abuse, the number of persons abused, the type of abuse sustained, and the actions taken on the reports. For purposes of these reports, sexual abuse shall be reported separately from physical abuse.

(2) The county's report to the department shall not include reports it receives from the long-term care ombudsman program pursuant to subdivision (c).

(3) The department shall refer to the bureau monthly data summaries of the reports of elder and dependent adult abuse, neglect, abandonment, isolation, and financial abuse, and other abuse it receives from county adult protective services agencies.

(c) Each long-term care ombudsman program shall report to the office of the Long-Term Care Ombudsman of the California Department of Aging monthly on the reports it receives pursuant to this chapter with a copy sent to the county adult protective services agency. The office of the state ombudsman shall submit a summarized quarterly report to the department based on the monthly reports submitted by local long-term care ombudsman programs. The reports shall be on forms adopted by the department and the office of the state ombudsman. The information reported shall include, but shall not be limited to, the number of incidents of abuse, the numbers of persons abused, the type of abuse, and the actions taken on the reports. For purposes of these reports, sexual abuse shall be reported separately from physical abuse.

SEC. 12. Section 15659 of the Welfare and Institutions Code is amended to read:

15659. (a) Any person who enters into employment on or after January 1, 1995, as a care custodian, health practitioner, or with an adult protective services agency or a local law enforcement agency, prior to commencing his or her employment and as a prerequisite to that employment shall sign a statement on a form, that shall be provided by the prospective employer, to the effect that he or she has knowledge of Section 15630 and will comply with its provisions. The signed statement shall be retained by the employer.

(b) Agencies or facilities that employ persons required to make reports pursuant to Section 15630, who were employed prior to January 1, 1995, shall inform those persons of their responsibility to

make reports by delivering to them a copy of the statement specified in subdivision (a).

(c) The cost of printing, distribution, and filing of these statements shall be borne by the employer.

(d) On and after January 1, 1995, when a person is issued a state license or certificate to engage in a profession or occupation the members of which are required to make a report pursuant to Section 15630, the state agency issuing the license or certificate shall send a statement substantially similar to the one contained in subdivision (a) to the person at the same time as it transmits the document indicating licensure or certification to the person.

(e) As an alternative to the procedure required by subdivision (d), a state agency may cause the required statement to be printed on all application forms for a license or certificate printed on or after January 1, 1995.

(f) The retention of statements required by subdivision (a), and the delivery of statements required by subdivision (b) shall be the full extent of the employer's duty pursuant to this section. The failure of any employee or other person associated with the employer to report abuse of elders or dependent adults pursuant to Section 15630 or otherwise meet the requirements of this chapter shall be the sole responsibility of that person. The employer or facility shall incur no civil or other liability for the failure of these persons to comply with the requirements of this chapter.

SEC. 13. Chapter 13.5 (commencing with Section 15760) is added to Part 3 of Division 9 of the Welfare and Institutions Code, to read:

CHAPTER 13.5. ENHANCED SERVICES

15760. Notwithstanding Section 15753, adult protective services shall include investigations, needs assessments, remedial, and preventative social work activities, and the necessary tangible resources such as food, transportation, emergency shelter, and in-home protective care, the use of multidisciplinary teams, and a system in which reporting or abuse can occur on a 24-hour basis.

15761. Notwithstanding Section 15753.5, "multidisciplinary personnel team" means any team of two or more persons who are trained in the prevention, identification, and treatment of abuse of elderly or dependent persons and who are qualified to provide a broad range of services related to abuse of elderly or dependent persons. The team may include, but is not limited to:

(a) Psychiatrists, psychologists, or other trained counseling personnel.

(b) Police officers or other law enforcement agents.

(c) Medical personnel with sufficient training to provide health services.

(d) Social workers with experience or training in prevention of abuse of elderly or dependent persons.

(e) Public guardian.

15762. When an allegation of abuse of an elder or dependent adult is reported to a county designated adult protective service agency and an agency social worker has reason to believe an elder or dependent adult has suffered or is at substantial risk of abuse pursuant to Section 15630, the social worker shall attempt to obtain consent to enter and meet privately with the elder or dependent adult about whom the report was made in the residence or dwelling in which the elder or dependent adult resides without the presence of the person's caretaker, attendant, or family or household member, unless the person requests the presence of the attendant, care giver, or family member, or refuses to meet with the social worker.

15763. (a) Each county shall establish an emergency response adult protective services program that shall provide in-person response, 24 hours per day, seven days per week, to reports of abuse of an elder or a dependent adult, for the purpose of providing immediate intake or intervention, or both, to new reports involving immediate life threats and to crises in existing cases. The program shall include policies and procedures to accomplish all of the following:

(1) Provision of case management services that include investigation of the protection issues, assessment of the person's concerns, needs, strengths, problems, and limitations, stabilization and linking with community services, and development of a service plan to alleviate identified problems utilizing counseling, monitoring, followup, and reassessment.

(2) Provisions for emergency shelter or in-home protection to guarantee a safe place for the elder or dependent adult to stay until the dangers at home can be resolved.

(3) Establishment of multidisciplinary teams to develop interagency treatment strategies, to ensure maximum coordination with existing community resources, to ensure maximum access on behalf of elders and dependent adults, and to avoid duplication of efforts.

(b) A county shall respond immediately to any report of imminent danger to an elder or dependent adult residing in other than a long-term care facility, as defined in Section 9701 of the Health and Safety Code, or a residential facility, as defined in Section 1502 of the Health and Safety Code. For reports involving persons residing in a long-term care facility or a residential care facility, the county shall report to the local long-term care ombudsman program. Adult protective services staff shall consult, coordinate, and support efforts of the ombudsman program to protect vulnerable residents. The county shall respond to all other reports of danger to an elder or dependent adult in other than a long-term care facility or residential care facility within 10 calendar days or as soon as practically possible.

(c) A county shall provide case management services to elders and dependent adults who are determined to be in need of adult

protective services for the purpose of bringing about changes in the lives of victims and to provide a safety net to enable victims to protect themselves in the future. Case management services shall include the following, to the extent services are appropriate for the individual:

(1) Investigation of the protection issues, including, but not limited to, social, medical, environmental, physical, emotional, and developmental.

(2) Assessment of the person's concerns and needs on whom the report has been made and the concerns and needs of other members of the family and household.

(3) Analysis of problems and strengths.

(4) Establishment of a service plan for each person on whom the report has been made to alleviate the identified problems.

(5) Client input and acceptance of proposed service plans.

(6) Counseling for clients and significant others to alleviate the identified problems and to implement the service plan.

(7) Stabilizing and linking with community services.

(8) Monitoring and followup.

(9) Reassessments, as appropriate.

(d) To the extent resources are available, each county shall provide emergency shelter in the form of a safe haven or in-home protection for victims. Shelter and care appropriate to the needs of the victim shall be provided for frail and disabled victims who are in need of assistance with activities of daily living.

(e) Each county shall designate an adult protective services agency to establish and maintain multidisciplinary teams including, but not limited to, adult protective services, law enforcement, home health care agencies, hospitals, adult protective services staff, the public guardian, private community service agencies, public health agencies, and mental health agencies for the purpose of providing interagency treatment strategies.

(f) Each county shall provide tangible support services, to the extent resources are available, which may include, but not be limited to, emergency food, clothing, repair or replacement of essential appliances, plumbing and electrical repair, blankets, linens, and other household goods, advocacy with utility companies, and emergency response units.

15764. Notwithstanding Section 10101.1, a county shall have no share of any nonfederal expenditures above the required expenditures for this program in the 1996–97 fiscal year, provided that the county has maintained the level of county matching funds it provided for this program in the 1996–97 fiscal year.

15765. This chapter shall become operative on May 1, 1999. Commencing with the 1999–00 fiscal year, this chapter shall be implemented only to the extent funds are provided in the annual Budget Act.

SEC. 14. (a) The Director of Social Services shall adopt regulations to implement the provisions of this act no later than January 31, 2000.

(b) Notwithstanding any other provision of law, the State Department of Social Services may implement the provisions of this act through an all county letter or similar instructions from the Director of Social Services until January 31, 2000.

SEC. 15. Section 8.5 of this bill incorporates amendments to Section 15630 of the Welfare and Institutions Code proposed by both this bill and AB 1780. 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 15630 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 1780, in which case Section 8 of this bill shall not become operative.

SEC. 16. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution 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 947

An act to amend Section 8686 of the Government Code, relating to disaster relief, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 28, 1998. Filed with Secretary of State September 29, 1998.]

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

SECTION 1. Section 8686 of the Government Code is amended to read:

8686. (a) For any eligible project, the state share shall amount to no more than 75 percent of total state eligible costs.

(b) Notwithstanding subdivision (a), the state share shall be up to 100 percent of total state eligible costs connected with the following events:

(1) The October 17, 1989, Loma Prieta earthquake.

(2) The October 20, 1991, East Bay fire.

(3) The fires that occurred in southern California from October 1, 1993, to November 30, 1993, inclusive.

(4) The January 17, 1994, Northridge earthquake.

(5) Storms that occurred in California during the periods commencing January 3, 1995, and February 13, 1995, as specified in agreements between this state and the United States for federal financial assistance.

(6) The storms that occurred in California in December of 1996 and early January of 1997, as specified in agreements between this state and the United States for federal financial assistance.

(7) The winter storms and flooding that occurred from February 1, 1998, to April 30, 1998, inclusive, as specified in agreements between this state and the United States for federal financial assistance.

(c) For any federally declared disaster subsequent to January 1, 1995, that the Legislature has designated in subdivision (b), the state shall assume the increased share specified in subdivision (b) in those cases where the Federal Emergency Management Agency or another applicable federal agency has approved the federal share of costs.

(d) The state shall make no allocation for any project application resulting in a state share of less than two thousand five hundred dollars ($2,500) under this section.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to provide essential relief to those persons and jurisdictions that have suffered damage or loss as a result of the floods that occurred in California beginning in February 1998, it is necessary that this act take effect immediately.

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